Office-Supreme Court, U.S.
FILED
AUG 31 1983
ALEXANDER L. STEVAS,
CLERK

83-346

No.

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

ESMAIL YERMIAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Whether, in a prosecution for the making of a false statement in violation of 18 U.S.C. 1001, the government must prove that the defendant knew that the statement was made "in [a] matter within the jurisdiction of [a] department or agency of the United States."

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-15a) is reported at 708 F.2d 365.

JURISDICTION

The judgment of the court of appeals was entered on April 19, 1983. A timely petition for rehearing was denied on July 5, 1983 (App. B, *infra*, 16a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 1001 provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States

knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

Following a jury trial in the United States District Court for the Central District of California, respondent was convicted on three counts of making a false statement in a matter within the jurisdiction of a federal agency, in violation of 18 U.S.C. 1001. He was sentenced to concurrent terms of five years' imprisonment on each count, the first six months to be served, and the balance suspended in favor of a term of five years' probation. The court of appeals reversed (App. A, *infra*, 1a-15a).

1. The evidence at trial showed (see App. A, *infra*, 2a) that in 1979 respondent was hired as an engineer by Gulton Industries, a defense contractor. Respondent was required to obtain a Department of Defense security clearance, since he was to have access to classified material in the course of his employment. Gulton's security officer therefore asked respondent to fill out a "Department of Defense Work Sheet for Preparation of Personnel Security Questionnaire" (*ibid.*; Tr. 46-48).

In response to a question on the work sheet asking whether he had ever been charged with any violation of law, respondent failed to disclose that in 1978 he had been convicted of mail fraud, in violation of 18 U.S.C. 1341. In describing his employment history, respondent falsely stated that he had been employed by Bell Helicopter, International, of Houston, Texas, and Square D Corporation of Los Angeles, California (Tr. 47-49, 54-55, 61-62; GX 1, 6). The Gulton security officer typed

the information provided by respondent onto another document captioned "Department of Defense Personnel Security Questionnaire." Respondent reviewed that document for errors and signed a certification stating that his "answers [were] true, complete, and correct to the best of [his] knowledge and belief, and [were] made in good faith" and that he knew "that any misrepresentation or false statement * * * may subject [him] to prosecution under Section 1001 of the United States Criminal Code * * *" (GX 3, at 5). The form respondent signed bore the following warning directly above the signature block (Tr. 50-52; GX 3, at 5):

> *NOTE:* PENALTY FOR MISREPRESENTATION—Failure to answer all questions, or any misrepresentation (by omission or concealment, or by misleading, false, or partial answers) may serve as a basis for denial of clearance for access to classified Department of Defense information. In addition, Title 18, United States Code 1001, makes it a criminal offense, punishable by a maximum of 5 years imprisonment, $10,000 fine, or both, knowingly and willfully to make a false statement or representation to any Department or Agency of the United States as to any matter within the jurisdiction of any Department or Agency of the United States.
>
> This includes any statement knowingly and willfully made by employer or employee herein which is knowingly incorrect, incomplete or misleading in any important particular * * *.

After witnessing respondent's signature, the Gulton security officer mailed the completed form to the Defense Industrial Security Clearance Office for processing (Tr. 51-52). Government investigators subsequently discovered that the information respondent had furnished was false, and he was denied a security clearance. When told of the discovery, respondent acknowl-

edged that the information he had provided was false (App. A, *infra*, 2a; Tr. 68).

At trial, respondent testified that he had responded falsely to questions on the security questionnaire concerning his criminal record and employment history (Tr. 58-60). He explained that he had made the false statements so that the information on the security questionnaire would be consistent with similar fabrications he had included on his employment application (Tr. 62). Respondent testified that he believed the information on the form would be used by Gulton only for classification of its employees and that he was unaware that the information was to be transmitted to the Department of Defense or to any other government agency (Tr. 62-63).[1] Respondent asserted that he had not read the form carefully when he signed it and thus did not notice either the words "Department of Defense" on the first page or the warning printed above the signature block (Tr. 65-66).

Prior to trial, respondent submitted a proposed jury instruction stating, *inter alia*, that a statement is fraudulent "if known to be untrue, and made or caused to be made with the intent to deceive the Government agency to whom submitted" (E.R. 7).[2] The trial court rejected that proposal and instead instructed the jury that the intent element of Section 1001 requires a finding that petitioner "did * * * [the] act or acts [charged] with knowledge * * * that the writing or document was false or fictitious" and that he "knew or should have known that the information was to be submitted to a government agency" (Tr. 109). Respondent objected to the instruction, contending that only actual

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[1] Respondent testified that he did not believe Gulton "would have either the resources or the inclination" to verify the data he had furnished (Tr. 69).

[2] "E.R." signifies the excerpt of record filed in the court of appeals.

knowledge that a statement is being made to an agency of the United States satisfies the intent element of Section 1001 (Tr. 84, 115).

On appeal, respondent again did not dispute that he had made false statements on the security questionnaire, but claimed only that he did not know the questionnaire would be sent to the government for purposes of a security clearance. Respondent contended that the trial court erred in failing to instruct the jury that it was required to find that he had actual knowledge that the statements were made in a matter within the jurisdiction of a federal agency (App. A, *infra*, 3a).

2. The court of appeals reversed (App. A, *infra*, 1a-15a). The court held that in a prosecution under Section 1001 the government must prove beyond a reasonable doubt that the defendant knew at the time he made the false statement that it was made in a matter within the jurisdiction of a federal agency. The court recognized (App. A, *infra*, 5a-6a) that its holding conflicts with decisions of the Fifth, Sixth and Seventh Circuits.[3] In addition, it acknowledged that its construction of the intent requirement of Section 1001 is not mandated by the language of the statute, which it

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[3] *United States* v. *Baker*, 626 F.2d 512, 516 (5th Cir. 1980); *United States* v. *Stanford*, 589 F.2d 285, 297 (7th Cir. 1978), cert. denied, 440 U.S. 983 (1979); *United States* v. *Lewis*, 587 F.2d 854, 857 (6th Cir. 1978) (per curiam). The court observed (App. A, *infra*, 4a-5a) that in other cases courts have assumed, without deciding, that knowledge of federal involvement is an element of a violation of Section 1001, citing *United States* v. *Cella*, 568 F.2d 1266, 1288 (9th Cir. 1977); *United States* v. *Candella*, 487 F.2d 1223, 1226-1227 (2d Cir. 1973), cert. denied, 415 U.S. 977 (1974); and *Ebeling* v. *United States*, 248 F.2d 429, 434-435 (8th Cir.), cert. denied, 355 U.S. 907 (1957).

characterized as "ambiguous" (App. A, *infra*, 6a).[4] However, the court concluded that the legislative history of Section 1001 and its predecessors, although "not entirely conclusive" (App. A, *infra*, 7a), suggests that Congress intended that knowledge of the facts giving rise to federal jurisdiction be an element of the offense.

The court observed (App. A, *infra*, 8a) that an earlier version of Section 1001 expressly required proof of an intent to defraud the government. In 1934 Congress removed the reference to intent to defraud and added the requirement that a statement be made in a matter within the jurisdiction of a federal agency. The court cited various statements made during congressional consideration of the 1934 amendment, in which legislators suggested examples of false statements that would be covered by the amendment (App. A, *infra*, 10a-12a). Although the court acknowledged that many of the legislators' comments addressed versions of the legislation that ultimately were not enacted, it concluded that the comments nonetheless indicated that the legislators believed the 1934 amendment would cover cases in which the maker of a statement would have known that it was made in a matter within the jurisdiction of a federal agency (*id.* at 12a).[5] The court concluded on the basis of this legislative history "that Congress intended that knowledge of federal involvement

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[4] The court of appeals believed (App. A, *infra*, 6a-7a) that the placement and punctuation of the terms "knowingly and willfully" do not indicate whether those terms modify only the phrase "makes any false, fictitious, or fraudulent statements" or the broader phrase "in any matter within the jurisdiction of any department or agency of the United States * * * makes any false, fictitious, or fraudulent statements."

[5] In particular, the court pointed to Congress's concern with the presentation to the Department of the Interior of false papers concerning "hot oil" and with the use of false wage certificates submitted for payment to the Public Works Administration (App. A, *infra*, 12a).

be an element of the crime" and that "the defendant's knowledge of federal involvement is entirely relevant to the proper effectuation of the Congressional goals * * *" (*id.* at 12a-13a).

The court of appeals rejected the government's alternative argument that any requirement of knowledge of federal involvement was satisfied by the objective "should have known" portion of the jury instruction. In the court's view, the instruction that respondent "knew or should have known that the information was to be submitted to the government" was insufficient because it allowed the jury to return a conviction even if it believed that respondent did not actually know that his statements were within federal agency jurisdiction. The court concluded that under the subjective standard of criminal knowledge used by the Ninth Circuit the jury was required to find—beyond a reasonable doubt—that respondent had actual knowledge of federal involvement. App. A, *infra*, 14a-15a.

REASONS FOR GRANTING THE PETITION

This case presents an important and recurring question concerning the elements the government must prove to establish a violation of the federal false statement statute, 18 U.S.C. 1001. Section 1001 makes it a crime "in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully [to] * * * make[ ] any false, fictitious or fraudulent statements." The court of appeals has held that a defendant cannot be convicted under Section 1001 unless the government establishes beyond a reasonable doubt not only that the defendant's statement was made in a matter within the jurisdiction of a federal agency and that the defendant knew the statement was false, but also that the defendant knew of the facts giving rise to federal jurisdiction. That unprecedented holding, which is clearly at odds with the legislative purpose underlying Section 1001, conflicts with deci-

sions of the three other courts of appeals that have considered the issue. If permitted to stand, the decision will substantially impede the government's ability to prosecute persons who have made false statements that—although not made directly to a federal agency—have the capacity seriously to interfere with governmental functions.

1. The Fifth, Sixth and Seventh Circuits have held that knowledge that a statement is made in a matter within the jurisdiction of a federal agency is not an essential element of a violation of Section 1001. *United States* v. *Baker*, 626 F.2d 512 (5th Cir. 1980); *United States* v. *Lewis*, 587 F.2d 854 (6th Cir. 1978) (per curiam); *United States* v. *Stanford*, 589 F.2d 285 (7th Cir. 1978), cert. denied, 440 U.S. 983 (1979). In each of those cases the defendants had submitted false statements to a state or local agency responsible for administering a program involving federal funding[6] and later claimed not to have been aware of the federal involvement in the program. In each case the court of appeals rejected the defendants' contention that the jury should have been instructed that it was required to find beyond a reasonable doubt that the defendants knew of the federal involvement.[7]

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[6] In *Baker* the defendants submitted false time sheets to a local housing authority, which in turn submitted the information to the Department of Housing and Urban Development in connection with the documentation of expenditures of federal grant funds. In *Lewis* and *Stanford* the defendants applied through state agencies to receive benefits under the Aid to Families With Dependent Children and food stamp programs.

[7] In some Section 1001 cases, courts have noted that the evidence indicated that a defendant knew of federal involvement. However, these cases do not hold squarely that such knowledge is an essential element of the violation. See, *e.g.*, *United States* v. *Cella*, 568 F.2d 1266, 1288 (9th Cir. 1977); *United States* v. *Lange*, 528 F.2d 1280, 1287 n.11 (5th Cir. 1976); *United States* v. *Candella*, 487 F.2d 1223, 1226-1227 (2d Cir. 1973), cert. denied, 415 U.S. 977 (1974); *Ebeling* v. *United States*, 248 F.2d 429, 434-435 (8th Cir.), cert. denied, 355 U.S. 907 (1957).

The three courts of appeals declined to read into Section 1001 an "unexpressed requirement" that an individual be aware not only that his statement is false, but also that his fraud is being perpetrated on the federal government (*United States* v. *Lewis*, *supra*, 587 F.2d at 857, citing *United States* v. *Feola*, 420 U.S. 671 (1975)). The courts found clear support for their construction of Section 1001 in the underlying legislative purpose to prevent the perversion of the authorized functions of federal agencies. See *United States* v. *Baker*, *supra*, 626 F.2d at 515-516; *United States* v. *Stanford*, *supra*, 589 F.2d at 297. They concluded that requiring proof of actual knowledge of federal involvement "would give the term [jurisdiction] a narrow and technical meaning not intended by Congress." *Ibid.*

Unlike the Fifth, Sixth and Seventh Circuits, which "declin[ed] to write any such requirement into the Act" (*United States* v. *Lewis*, *supra*, 587 F.2d at 857), the court below concluded that knowledge of the facts giving rise to federal jurisdiction is an essential element of a violation of Section 1001 and that the prosecution therefore must establish such knowledge beyond a reasonable doubt. Unless this conflict in the circuits is resolved, there will be a serious adverse effect on the government's ability to protect federally-sponsored programs and other governmental functions from fraud.

The holding of the court below will affect a broad range of false statement prosecutions. Much information that is not transmitted directly to the federal government nevertheless is capable of affecting federal functions because it ultimately is transmitted to a federal agency or otherwise used in connection with a federal program.[8] For example, many federal benefit pro-

[8] It is well established that statements may be made in a matter within the jurisdiction of the United States for purposes of Section 1001, even if they are not made directly to the federal government. See, *e.g.*, *United States* v. *Hooper*, 596 F.2d 219, 222-223 (7th Cir. 1979); *United States* v. *Candella*, *supra*, 487

grams, including those relating to public welfare, medical care, employment training, and low income housing, are administered primarily through state, local, or private agencies. Beneficiaries of such programs normally do not submit applications or other information directly to the federal government; rather, they deal with intermediary agencies.[9] Subcontractors on government contracts normally submit to the prime contractor statements concerning prices, costs, and performance standards,[10] while sellers of a commodity subject to a government pricing program may provide certifications to purchasers.[11] As in this case, private defense contractors obtain information from their employees and forward it to the federal government, which conducts security investigations. In each of these situations, false statements have the capacity to interfere seriously with the integrity of a federal program: they can induce the payment of federal funds not authorized by statute, or the granting of a security clearance to an individual who should not have access to sensitive defense information. As the courts of appeals have noted,[12] these adverse effects on federal functions

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F.2d at 1227; *United States* v. *Matanky*, 482 F.2d 1319, 1322 (9th Cir.), cert. denied, 414 U.S. 1039 (1973); *United States* v. *Waters*, 457 F.2d 805 (3d Cir. 1972) (per curiam).

[9] See, *e.g.*, *United States* v. *Baker*, *supra* (public housing); *United States* v. *Stanford*, *supra* (welfare benefits); *United States* v. *Matanky*, *supra* (medical benefits).

[10] See, *e.g.*, *Ebeling* v. *United States*, *supra*; 32 C.F.R. XXIII (subcontracting policies and procedures).

[11] See *United States* v. *Wolf*, 645 F.2d 23 (10th Cir. 1981).

[12] See *United States* v. *Baker*, *supra*, 626 F.2d at 516; *United States* v. *Stanford*, *supra*, 589 F.2d at 297-298. As the court stated in *Baker*, *supra*, 626 F.2d at 516:

> 18 U.S.C. § 1001 is designed to protect federal funds and functions from fraudulent interference. In furthering these purposes, it is irrelevant whether defendant knew that his

can occur whether or not the person making the false statement can be shown to have been aware of the facts supporting federal jurisdiction.

The decision below will make it impossible to obtain convictions under Section 1001 in many cases. Awareness of federal involvement is often peculiarly within the knowledge of the defendant; when a false statement is not submitted directly to a federal agency, such awareness cannot be inferred simply from the making of the statement. Even in a case like this one, in which the form gives clear notice that statements will be submitted to a federal agency, the government may be unable to rebut the defendant's assertion that he did not see the notice. Here the form was captioned "Department of Defense Personnel Security Questionnaire," and a large warning over respondent's signature explained that false statements could result in prosecution under Section 1001. Nevertheless, the government was unable to present direct evidence to refute respondent's testimony that he failed to notice either the caption or the warning. The court below compounded the difficulties of proof by holding that the government would not be permitted to satisfy its burden of proof by showing that under the particular circumstances a reasonable person should have known that a statement fell within the jurisdiction of a federal agency; instead the government must establish subjective knowledge of federal involvement. In many cases, such proof will be impossible, even though the potential for harm to federal functions is clear.

2. The holding of the court below that knowledge of federal involvement is an essential element of a violation of Section 1001 is at odds with Congress's purpose: protecting federal functions and funds from fraud. As the Court explained in *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941), the statute, as amended in 1934, "in-

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intentionally false statements might eventually influence a federal agency.

dicated the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described." In view of the broad legislative purpose, the Court has concluded that Section 1001 is to be read expansively. See *United States* v. *Bramblett*, 348 U.S. 503, 507 (1955) ("[t]here is no indication in either the committee reports or in the congressional debates that the scope of the statute was to be in any way restricted"). The decision below subverts the broad legislative objective by effectively immunizing a broad category of false statements that are not made directly to a federal agency but that can nevertheless cause serious harm to federal functions. Congress could not have intended such a result.

The conclusion of the court below that the reference to federal involvement in Section 1001 is not simply a jurisdictional requirement, but also part of the scienter requirement of the statute, is inconsistent with the reasoning of this Court in *United States* v. *Feola*, *supra*. In *Feola* the Court held that knowledge of facts giving rise to federal jurisdiction is not an essential element of a violation of the federal assault statute, 18 U.S.C. 111. The Court looked to the purposes of the statute in concluding that "[a]ll the statute requires is an intent to assault, not an intent to assault a federal officer." 420 U.S. at 684. The legislative purpose underlying Section 1001 similarly indicates that the statute requires only the intent to deceive, not the intent to deceive the federal government. As in *Feola*, construction of the statute not to require knowledge of jurisdictional facts does not create any risk of unfairness to defendants, because the conduct at issue is wrongful regardless of the identity of the target. See 420 U.S. at 685.[13]

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[13] The court of appeals suggested in a footnote (App. A, *infra*, 14a n.14) that *Feola* could be distinguished from this case on the ground that committing an assault is a crime in every state, even apart from the federal statute. However, the same

Nothing in either the language or the legislative history of Section 1001 indicates that Congress meant to require that the government establish beyond a reasonable doubt that a defendant had knowledge of the facts that give rise to federal jurisdiction.[14] The court of appeals' unprecedented expansion of the government's burden of proof in Section 1001 cases will seriously interfere with the government's ability to protect its funds and functions from fraud. In view of the conflict among the circuits created by the decision below, review by this Court is warranted.

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can be said of the making of a false statement. See, *e.g.*, Cal. Penal Code § 532 (West 1970) (false pretenses); *id.* § 484 (theft). In any event, making of a false statement punishable under Section 1001 is malum in se; thus, there is no danger that an unsuspecting defendant will be unfairly surprised if his conduct turns out to be a violation of a federal statute.

See also *United States* v. *Bankston*, 603 F.2d 528, 532 (5th Cir. 1979) (knowledge of interstate transportation is not an element of a violation of 18 U.S.C. 1201); *United States* v. *Hobson*, 519 F.2d 765, 769-770 (9th Cir.), cert. denied, 423 U.S. 931 (1975) (knowledge by an accessory after the fact that a federal offense has been committed is not required under 18 U.S.C. 3); *United States* v. *Howey*, 427 F.2d 1017, 1018 (9th Cir. 1970) (knowledge that property taken belongs to the United States is not an element of the offense under 18 U.S.C. 641).

[14] The legislative history cited by the court of appeals (App. A, *infra*, 8a-12a) consists primarily of scattered comments by legislators about versions of the 1934 amendment to Section 1001 that never became law and that were considerably more restrictive than the amendment that eventually was enacted. Moreover, the fact that the legislators referred primarily to types of false statements that normally would be made with knowledge of federal involvement does not suggest that Congress intended to confine the reach of Section 1001 to those particular categories of false statements. The court of appeals itself characterized the legislative history as "not entirely conclusive" (*id.* at 7a). In view of Congress's broad purposes in enacting the 1934 amendments, the court's restrictive reading of the legislative history appears to be clearly incorrect.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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AUGUST 1983

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 81-1192
DC No. CR 81-43-R
Filed April 19, 1983

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

v.

ESMAIL YERMIAN, DEFENDANT-APPELLANT.

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted May 3, 1982

Before: FLETCHER, PREGERSON and REINHARDT, Circuit Judges.

OPINION

FLETCHER, Circuit Judge:

Appellant Yermian was charged with violating 18 U.S.C. § 1001 (1976).[1] At trial, Yermian's defense was simply that he did not know at the time he signed a personnel security form that it would be sent to the

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[1] 18 U.S.C. § 1001 (1976) states:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fradulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

government. He appeals his conviction. Our jurisdiction rests on 28 U.S.C. § 1291. We reverse the judgment and remand for a new trial because the trial court construed the scienter requirement of section 1001 too narrowly and gave the jury an inadequate instruction on that issue.

I. FACTS.

Shortly after appellant Yermian was hired as an engineer by Galton Industries, Inc. (Galton) of Hawthorne, California, Galton asked Yermian to fill out a personnel security form. In filling out the form, Yermian provided the company with false information as to his job history and criminal record. At a later date, Galton presented Yermian with a typed version of the form, which Yermian signed, allegedly without carefully re-reading it. A notice at the bottom of the typed form warned that a false representation would be a violation of 18 U.S.C. § 1001 and elaborated on the possible penalty for such a violation.

Galton subsequently sent the form to the Department of Defense, pursuant to a routine FBI security check necessitated by the nature of Galton's work. The FBI discovered that some of Yermian's statements were false and denied Yermian a security clearance. Confronted with the reasons for the denial of his security clearance, Yermian immediately conceded that he had lied.

II. SCIENTER REQUIREMENT OF 18 U.S.C. § 1001.

18 U.S.C. § 1001 provides in part that "[w]hoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully ... makes any false ... statements" shall be fined or imprisoned. 18 U.S.C. § 1001 (1976).[2]

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[2] In *United States* v. *Rose*, 570 F.2d 1358, 1363 (9th Cir. 1978), this court enumerated the elements necessary for a conviction under 18 U.S.C. § 1001; (1) a statement; (2) falsity; (3)

The courts have long recognized that a conviction under section 1001 requires that defendant know at the time he makes the statement that the statement is false, *United States* v. *Lange*, 528 F.2d 1280, 1288-89 (5th Cir. 1976), and that the statement is made in a matter within the jurisdiction of a federal agency, *United States* v. *Kraude*, 467 F.2d 37, 38 (9th Cir.), *cert. denied*, 409 U.S. 1076 (1972); *Lowe* v. *United States*, 141 F.2d 1005, 1006 (5th Cir. 1944).

Yermian concedes that he knew at the time he made the statement that it was false. He also concedes that since the process of checking the security status of the employees of a defense contractor is a matter within the jurisdiction of the Department of Defense and since his false statement regarding his prior employment history and criminal record was connected to that security-checking process, the statement was made in a matter within the jurisdiction of a federal agency. He asserts, however, that at the time he made the admittedly false statement he had no idea that the statement was part of a federal security-checking process and hence had no knowledge that the statement was made in a matter within the jurisdiction of a federal agency. He contends that he had no knowledge that Galton was required to submit information regarding the security status of its employees to the federal government and that Galton's submission to the FBI of the information Yermian had provided was entirely unexpected by him.

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specific intent; (4) materiality; and (5) agency jurisdiction. As the *Rose* court noted, in *United States* v. *Bedore*, 455 F.2d 1009, 1111 (9th Cir. 1972), we had further limited the scope of § 1001 to only those statements that either are related to a claim of the maker "to a privilege from the United States or to a claim against the United States" or "might pervert or corrupt the authorized functions of those agencies to whom the statements were made."

Hence, we must decide whether the element of specific intent embodied in the words "knowingly and willfully" of section § 1001 includes not only the defendant's knowledge of the statement's falsity, but also the defendant's knowledge that the statement, at the time it was made, was made in a matter within the jurisdiction of a federal agency.

No decision in this circuit has addressed the precise question raised here.[3] In *United States* v. *Cella*, 568 F.2d 1266, 1288 (9th Cir. 1978), the defendant contended the evidence was insufficient to show that he knew that his false statement was made in a matter within the jurisdiction of a federal agency. We sustained the conviction, on the basis that it was beyond credulity that the defendant, who was the administra-

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[3] For example, in *United States* v. *Kraude*, 467 F.2d 37, 38 (9th Cir.), *cert. denied*, 415 U.S. 977 (1974), where we held that the submission of false Medicare claims to a contractual agent of HEW was sufficient to support a conviction under § 1001, we did not discuss the issue of defendant's knowledge of federal involvement, presumably because the defendant there must have known that Medicare is a federal program and hence that his false Medicare claims were made in a matter within the jurisdiction of a federal agency. Similarly, in *Gilbert* v. *United States*, 359 F.2d 285, 287 (9th Cir.), *cert. denied*, 385 U.S. 882 (1966), the issue of jurisdictional knowledge did not arise, since the defendant "certainly was aware that the endorsement of the [U.S.] checks was the first crucial step in their journey to the Treasury Department where they would be ultimately presented for payment." In *Ogden* v. *United States*, 303 F.2d 724, 728-32 (9th Cir. 1962), a defense contractor employee raised, and the court addressed only a defense based on impropriety of the security clearance procedures and not one grounded on a lack of jurisdictional knowledge. *See also Neely* v. *United States*, 300 F.2d 67 (9th Cir.) (issue of jurisdictional knowledge not raised), *cert. denied*, 369 U.S. 864 (1962); *Brandow* v. *United States*, 268 F.2d 559 (9th Cir. 1959) (same); *Pitts* v. *United States*, 263 F.2d 252 (9th Cir.) (same), *cert. denied*, 360 U.S. 935 (1959); *Cohen* v. *United States*, 201 F.2d 386 (9th Cir.) (same), *cert. denied*, 345 U.S. 951 (1953).

tor of Mercy Hospital, could be "ignorant" of the fact that his false entries on hospital records "would eventually be used to prepare income tax returns . . . and Medicare reimbursement reports." There was also direct evidence of the defendant's knowledge. In *Cella* we assumed, without holding, that an element of the offense was knowledge of federal involvement.

In sustaining convictions under section 1001, the Second and Eighth circuits have apparently made the same assumption, stressing in their opinions the fact that the defendant had actual knowledge that his false statement was made in a matter within the jurisdiction of a federal agency. *E.g.*, *United States* v. *Candella*, 487 F.2d 1223, 1226-27 (2d Cir. 1973) (defendant "was aware" that his false statements submitted to New York City would form basis for federal reimbursement), *cert. denied*, 415 U.S. 977 (1974); *Ebeling* v. *United States*, 248 F.2d 429, 434-35 (8th Cir.) (defendant employee personally knew and intended that false invoices would become part of a cost statement submitted to federal government by employer for reimbursement), *cert. denied*, 355 U.S. 907 (1957).

By contrast, courts in the Fifth, Sixth, and Seventh circuits have stated that the defendant's knowledge that a false statement is made in a matter within the jurisdiction of a federal agency is not a necessary element of section 1001. *United States* v. *Baker*, 626 F.2d 512, 516 (5th Cir. 1980);[4] *United States* v. *Stanford*, 589 F.2d 285, 297 (7th Cir. 1978), *cert. denied*, 440 U.S. 983

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[4] Although only four years before *Baker* the Fifth Circuit had stressed the existence of defendants knowledge of the "federal government's connection with ... [the false] affidavit" in sustaining a § 1001 conviction, *United States* v. *Lange*, 528 F.2d 1280, 1287 n.11 (5th Cir. 1976), in its 1980 decision, the Fifth Circuit did not mention, let alone distinguish, *Lange*'s emphasis on the existence of the defendant's knowledge of federal involvement.

(1979); *United States* v. *Lewis*, 587 F.2d 854, 857 (6th Cir. 1978) (per curiam). Each of those cases, however, involved a direct attempt by a defendant to obtain funds from a federal source by fraudulent means.

We are now confronted directly with the question whether the government must prove as an essential element of a section 1001 violation that at the time the defendant made the false statement he knew that the statement was made in a matter within the jurisdiction of a federal agency. In light of the paucity of analysis in the cases and the lack of direct authority in our circuit, we must look closely at the language of section 1001 and the policy and purposes underlying it to determine whether jurisdictional knowledge is an essential element of a section 1001 offense.

We find the language of the statute ambiguous, as did the court in *Baker*, 626 F.2d at 515. While the phrase "knowingly and willfully" clearly provides that specific intent is a crucial element of the offense, neither the grammatical construction nor the punctuation of the statute indicates whether the "knowingly and willfully" phrase modifies only the phrase "makes any false, fictitious or fraudulent statements" *or* the broader phrase "in any matter within the jurisdiction of any department or agency of the United States ... makes any false, fictitious or fraudulent statements."

The placement of the "knowingly and willfully" phrase after, rather than before, the "jurisdiction phrase" is not indicative of whether jurisdictional knowledge is an element of the section 1001 offense. In the immediate statutory predecessor to section 1001, the words "knowingly and willfully" did precede not only the phrase "make ... any false or fraudulent statements" but also the phrase "in any matter within the jurisdiction of any department or agency of the United States." Act of Apr. 4, 1938, ch. 69, 52 Stat. 197 (the

"1938 Act").[5] The recodification of the 1938 Act in 1948, that resulted in the present language of section 1001, was intended to be not a "substantive change," *see United States* v. *Bramblett*, 348 U.S. 503, 508 (1954) (describing 1948 revision of the 1938 Act), but merely one of several "minor changes of phraseology." H.R. Rep. No. 304, 80th Cong., 1st Sess. A80-A81 (1947) *reprinted in* 1948 U.S. Code Cong. Serv., Spec. Pamphlet for Title Eighteen 2434, 2535. Consequently, the fact that the "jurisdiction" phrase now precedes the "knowingly and willfully" phrase is not determinative of whether or not the latter phrase was meant to be read to modify the "jurisdiction" phrase.[6]

Although perhaps not entirely conclusive, the legislative history of section 1001 and its predecessors supports the view that Congress intended jurisdictional knowledge to be an element of the crime.[7]

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[5] The 1938 Act stated in pertinent part:

> [W]hoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder . . . shall be fined.

Act of Apr. 4, 1938, ch. 69, 52 Stat. 197.

[6] The inclusion of the word "knowing" in the third clause of § 1001, which emphasizes that the defendant must know that a document he makes or uses contains a falsehood, sheds no light on whether jurisdictional knowledge is required, since the phrase "knowingly and willfully," appearing before all three clauses, remains to provide the basis for a requirement of knowledge of federal involvement pertaining to all three clauses.

[7] While discussing the purported policy and purposes behind § 1001 in general terms, neither the *Baker* nor the *Stanford*

The earliest predecessor of the present section 1001 that made the making of a false statement in a matter within the jurisdiction of any federal agency[8] a crime, the Act of Oct. 23, 1918, ch. 194, 40 Stat. 1015 (the "1918 Act"),[9] specifically included an element of specific intent to defraud the United States. No one could be convicted under the 1918 Act for making a false statement unless he had done so either "for the *purpose* of obtaining ... the payment" of a "claim upon or against the Government of the United States" or "for the *purpose* and with the *intent* of cheating and swindling or defrauding the Government of the United States." 40

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court examined the legislative history of § 1001 or its predecessor statutes. *Baker*, 626 F.2d at 515-16; *Stanford*, 589 F.2d at 297-98. The *Lewis* court, in its analysis of the legislative history of § 1001, did little more than paraphrase a tangentially related Supreme Court case. 587 F.2d at 856-57.

[8] Previous to the 1918 Act, the making of a false statement was itself punishable as a federal crime only if the statement was made for the purpose of obtaining payment or approval of a federal claim *and* the federal claim was made or presented for payment to or approval by military personnel. *See* Act of March 4, 1909, ch. 321, 35 Stat. 1088, 1095-96 (1909).

[9] The 1918 Act stated in pertinent part:

> [W]hoever, for the *purpose* of obtaining or aiding to obtain the payment of [a "claim upon or against the Government of the United States or any department or officer therefor, or any corporation in which the United States of America is a stockholder"], or for the *purpose and* with *the intent of* cheating and swindling or defrauding the Government of the United States or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsity [sic] or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statements or entry .... shall be fined.

Act of Oct. 23, 1918, ch. 194, 40 Stat. 1015 (emphasis added).

Stat. at 1015 (emphasis added). This requirement of specific intent to defraud the United States carried with it an implicit, if not explicit, requirement that the maker of the false statement know that the statement is made in a matter within the jurisdiction of a United States agency.

After the Supreme Court had narrowly construed the phrase "defrauding the Government of the United States" contained in the 1918 Act to mean solely "fraudulent[ly] causing ... [a] pecuniary or property loss" to the federal government, *United States* v. *Cohn*, 270 U.S. 339, 346-47 (1925), Congress sought to extend the reach of the statute to protect more broadly "the authorized functions of governmental departments and agencies from the perversion which might result from ... deceptive practices." *United States* v. *Gilliland*, 312 U.S. 86, 93 (1940) (describing enactment of the Act of June 18, 1934, ch. 587, 48 Stat. 996 (the "1934 Act")).[10] To effect the change, Congress deleted the references to a "purpose" of obtaining payment of a claim upon or against the United States and to a "purpose" and "intent" of cheating or defrauding the United States. *Id.* However, to be sure that a conviction under the new law still required the making of a false statement in a matter within the jurisdiction of the federal

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[10] The 1934 Act stated in pertinent part:

> [W]hoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder ... shall be fined.

Act of June 18, 1934, ch. 587, 48 Stat. 996.

government, Congress inserted a new reference to federal jurisdiction at the end of the description of the prohibited conduct.[11] *United States* v. *Bramblett*, 348 U.S. at 507-08 (describing 1948 revision of the 1938 Act) ("jurisdiction" phrase inserted "simply to compensate for the deleted language as to purpose—to indicate that not all falsifications but only those made to government organs were reached").

The committee reports and the Congressional debates on the various bills[12] which culminated in the

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[11] *Id.*

[12] The convoluted legislative history of the 1934 Act began with the submission of proposed legislation by the Secretary of the Interior on February 7, 1934, to the House and Senate judiciary committees, which legislation was designed to penalize the "presentation of a false written instrument" in any matter within the jurisdiction of the Secretary. S. Rep. No. 288, 73d Cong., 2d Sess. 1 (1934); H.R. Rep. 829, 73d Cong., 2d Sess. 2 (1934). Drawing on the Secretary's proposal, each committee then reported similar bills to the floor, 78 Cong. Rec. 2387 (1934) (reporting S.R. 2686); *id.* at 3112 (reporting H.R. 8046), although the House committee had amended the language of the Secretary's proposal to include an element of intent to defraud the United States. *Compare id.* at 3724 (H.R. 8046) *with id.* at 2152, 2858-59 (S.R. 2686). After debate on and passage of each bill in its house of origin, *id.* at 2858-59 (S.R. 2686); *id.* at 3724-25 (H.R. 8046), the Senate requested the return of its bill from the House and adopted the earlier enacted House version, *id.* at 5746. President Roosevelt then vetoed H.R. 8046 solely on the gound that the bill would punish with lesser penalties certain conduct that was already punishable under the 1918 Act. *Id.* at 6778-79.

Within two months of the presidential veto, the Senate committee on the judiciary, abandoning H.R. 8046, reported amendments to another then unenacted bill, H.R. 8912, 73d Cong., 2d Sess. (1934), which had been designed to extend the 1918 Act to cover injury to U.S. property. The Senate amendments of H.R. 8912 further broadened the scope of the 1918 Act to punish also the presentation of false papers to a federal agency—even where no pecuniary loss to the government resulted—without

1934 Act contain references to the act's broadening the offense to include the presentation of false papers "*before* any department or agency of the Government," H.R. Rep. 829, 73d Cong., 2d Sess. 2 (1934) (emphasis added) (report on H.R. 8046); to the protection of "[t]he rights of the accused" by a requirement that the "act [of presentation of a false written instrument relating to any matter within federal jurisdiction] must be committed willfully and knowingly," *id.*; to the extension of the law so that it "would close around and prosecute those who . . . make false affidavits or submit fictitious bids, and so forth," 78 Cong. Rec. 2859 (1934) (statement of Sen. Ashurst on S.R. [sic] 2686); to the "purpose" of the bill being to protect "the revenues of the people from persons who knowingly make false certificates and supply fictitious bids" and to stop 'these

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lessening the penalties provided under the 1918 Act. 78 Cong. Rec. 9790 (1934) (submitting S. Rep. 1202, 73d Cong., 2d Sess. 1 (1934)). The bill as amended was passed by the Senate, *id.* at 11,270-71, and concurred in by the House, *id.* at 11,513. After examination and signing, *id.* at 11,559, 11,602, the bill was presented to, *id.* at 12,259, and signed by the President, *id.* at 12,452.

H.R. 8912, as amended, being a modification of the previous 1918 Act rather than a newly drafted statute like H.R. 8046 or S.R. 2686, contains phrasing different from H.R. 8046 or S.R. 2686, upon which the 1934 House and Senate debates and committee consideration centered. Nonetheless, neither the Senate report that set forth the amendments to H.R. 8912 nor the brief Congressional proceedings accompanying the swift passage of H.R. 8912 as amended contain any indication whatsoever that the Congress, by substituting H.R. 8912 (the 1934 Act) for the previously passed but vetoed H.R. 8046, intended to alter any substantive aspect of the old bill—including the requisite elements of the offense—other than its lesser penalties and its provision for a specific intent to defraud the United States. Hence, the Congressional debates and committee reports pertaining to H.R. 8046 and S.R. 2686, while technically perhaps not part of the legislative history of the 1934 Act, nonetheless are directly indicative of the Congressional intent underlying the 1934 Act.

grafters, place hunters, and obscene buzzards who are trying to extract money illegally out of the Treasury," *id.* at 2858; and to the printing of a warning about the law on "every proposal," *id.* at 3724 (statement of Rep. McKeown on H.R. 8046). These references indicate that the legislators contemplated application of the 1934 Act in situations where the maker of the statement knows that the statement is made in a matter within the jurisdiction of a federal agency. The fact that the amendment was directly designed to remedy two sorts of conduct in which the makers of false statements clearly know of Federal involvement—the presentation of "false papers" regarding hot oil before the Department of Interior and the use of false certificates of wages paid by contractors in order to obtain reimbursement from the Public Works Administration, S. Rep. No. 1202, 73d Cong., 2d Sess. 1 (1934) (report on H.R. 8912 amendments)—also supports the conclusion that Congress, in deleting from the statute the requirement of fraudulent intent to cause pecuniary loss, did not at the same time intend to eliminate the previous requirement that the maker know that the statement was made in a matter within the jurisdiction of a federal agency.

We conclude that Congress intended that knowledge of federal involvement be an element of the crime. We agree with the *Baker* court that "18 U.S.C. § 1001 is designed to protect federal funds and functions from fraudulent interference." 626 F.2d at 516; *see also United States* v. *Gilliland*, 312 U.S. 86, 93 (1940). This is entirely consistent with the language of the statute and its history. But we do not subscribe to the view that "[i]n furthering these purposes, it is *irrelevant* whether defendant knew that his intentionally false statements might *eventually* influence a federal agency." *Baker*, 626 F.2d at 516 (emphasis added). To the contrary, the defendant's knowledge of federal involvement is entirely relevant to the proper effectuation of

the Congressional goals, and a requirement of section 1001 that such knowledge exist is entirely consistent with the Congressional view of the scope of the statute as revealed by the statutory language and legislative history.

Accordingly, we hold that as an essential element of a section 1001 violation, the government must prove beyond a reasonable doubt[13] that the defendant knew at the time he made the false statement that it was made in a matter within the jurisdiction of a federal agency.[14]

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[13] The existence on the form Yermian signed of a warning that a false statement violates § 1001 is, of course probative of Yermian's knowledge that he was making a statement in a matter within the jurisdiction of a federal agency, but is not, in, and of itself, conclusive on the issue of specific intent. *Contra Terry* v. *United States*, 131 F.2d 40, 43 (8th Cir. 1942) (defendant "by legal implication ... bound to know" from references on form to Federal Housing Administration that false statement was made in a matter within jurisdiction of federal agency).

[14] Because of the similarity of § 1001 to the perjury statute, 18 U.S.C. § 1621 (1976), we find that the cases construing § 1621 bolster our conclusions here. To convict under the perjury statute, the government must prove (1) that the defendant actually knew that his statement at the time he made it was false, *United States* v. *Sweig*, 441 F.2d 114, 117 (2d Cir.), *cert. denied*, 403 U.S. 932 (1971), and (2) that the defendant made the statement under oath, *United States* v. *Arias*, 575 F.2d 253, 254 (9th Cir.), *cert. denied*, 439 U.S. 868 (1978). In the context of the perjury offense, the defendant's taking of an oath ensures that he knows that his false statement, unlike most other false statements he may have made, could possibly subject him to criminal prosecution.

The same principle applies with equal force in the context of § 1001. To ensure that a person knows that the making of a false statement could subject him to criminal liability, the defendant must know at the time he makes the statement that the statement is made in a matter within the jurisdiction of the government. The making of a false statement to a private entity, without knowledge that the statement is made in a matter within the jurisdiction of a federal agency, does not fall within the

III. ADEQUACY OF JURY INSTRUCTIONS.

The government contends that even if knowledge of governmental involvement is an essential element of 18 U.S.C. § 1001, the instruction given to the jury met that requirement. The jury was instructed that it could convict upon a finding "that the defendant knew or *should have known* that the information was to be submitted to the government" (emphasis added). The government argues that the instruction reflects a "reasonably foreseeable" standard and that this "objective" standard[15] is proper if knowledge that the statement is destined for the government is an element of the crime.

The standard proposed by the government, however, does not comport with the "subjective" standard of criminal knowledge required by this circuit. *United States* v. *Jewell*, 532 F.2d 697 (9th Cir.) (en banc), *cert. denied*, 426 U.S. 951 (1976). In *Jewell*, we held "(1) that the required knowledge is established if the ac-

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strictures of § 1001, even if the statement is in fact forwarded to the government.

For similar reasons, we are not convinced by the reliance of the *Stanford* and *Lewis* courts on *United States* v. *Feola*, 420 U.S. 671 (1975). *See Stanford*, 589 F.2d at 297-98; *Lewis*, 587 F.2d at 857. In *Feola*, the Supreme Court held that 18 U.S.C. § 111 (1976), which makes assault upon a federal officer a federal offense, does not include as an element of the offense the defendant's knowledge that the assaulted person is a federal officer. 420 U.S. at 684. However, unlike making a false statement, committing an assault is a crime—even apart from the federal statute—in every state of the Union. Hence, as the Supreme Court pointed out, § 111 is "no snare for the unsuspecting," since one committing an assault "knows from the very onset that his planned course of conduct is wrongful" and because § 111 does not create a "situation ... where legitimate conduct becomes unlawful solely because of the [federal] identity of the individual or agency affected." *Id.* at 685.

[15] By contrast, a "subjective" knowledge standard requires proof that the defendant actually knew the pertinent fact.

cused is aware of a high probability of the existence of the fact in question, (2) unless he actually believes it does not exist." *Id.* at 704 n.21; *see also United States* v. *Esquer-Gamez*, 550 F.2d 1231, 1235-36 (9th Cir. 1977).

In this case, the court's instruction allowed the jury to find knowledge merely on the basis that the defendant should have known that his statements were going to the government and hence were made in a matter within federal agency jurisdiction. It allowed the jury to convict Yermian even if it did not find that he was aware of a high probability that the statement was made in a matter within the jurisdiction of the government, or, indeed, even if it believed that he, in fact, did not know that his statement would be sent to the government.

The district court's judgment is, therefore, REVERSED and REMANDED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 81-1192
DC No. CR 81-43-R
Filed July 5, 1983

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

v.

ESMAIL YERMIAN, DEFENDANT-APPELLANT.

Before: FLETCHER, PREGERSON and REINHARDT, Circuit Judges

ORDER

The panel as constituted in the above case has voted unanimously to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

Office - Supreme Court, U.S.
FILED
JAN 26 1984
ALEXANDER L. STEVAS

No. 83-346

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

ESMAIL YERMIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED AUGUST 31, 1983
CERTIORARI GRANTED NOVEMBER 28, 1983

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

UNITED STATES *v.* ESMAIL YERMIAN

CR 81-00043-01-RJK

DATE	PROCEEDING
January 16, 1981	Indictment
January 26, 1981	Arraignment
March 10, 1981	Proceedings on trial before the Honorable Manuel Real; Jury returns verdict of guilty on all counts
March 30, 1981	Defendant sentenced
April 8, 1981	Notice of appeal filed

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

ESMAIL YERMIAN *v.* UNITED STATES

C.A. No. 81-1192

DATE	PROCEEDING
April 19, 1983	Court of Appeals order and judgment
July 5, 1983	Petition for rehearing denied
November 28, 1983	Order of Supreme Court granting petition for a writ of certiorari

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

September 1980 Grand Jury

CR 81-0043

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ESMAIL YERMIAN, DEFENDANT.

INDICTMENT

(18 U.S.C. § 1001: False Statement to a Government Agency)

The Grand Jury charges:

COUNT ONE
(18 U.S.C. § 1001)

On or about August 24, 1979, in Los Angeles County, within the Central District of California, defendant ESMAIL YERMIAN knowingly and willfully made a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of United States Department of Defense, an agency of the United States, in that defendant ESMAIL YERMIAN, in response to question number 22 on a Personal Security Questionnaire, failed to disclose to officials of the Department of Defense that he had a prior felony conviction for a violation of Title 18, United States Code, Section 1341, mail fraud, which defendant ESMAIL YERMIAN then and there well knew.

COUNT TWO
(18 U.S.C. § 1001)

On or about August 24, 1979, in Los Angeles County, within the Central District of California, defendant ESMAIL YERMIAN knowingly and willfully made a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of United States Department of Defense, an agency of the United States, in that defendant ESMAIL YERMIAN, in response to question 10 on a Personnel Security Question-

naire, stated to officials of the United States Department of Defense that he was employed by Bell Helicopter International in "Iran-Houston, Texas" from February 1975 to March 1979, whereas in truth and fact as defendant ESMAIL YERMIAN then and there well knew, he had never been employed by Bell Helicopter International.

COUNT THREE

(18 U.S.C. § 1001)

On or about August 24, 1979, in Los Angeles County, within the Central District of California, defendant ESMAIL YERMIAN knowingly and willfully made a false, fictitious and fraudulent statement and representation as to material facts in a matter within the jurisdiction of United States Department of Defense, an agency of the United States, in that defendant ESMAIL YERMIAN, in response to question 10 on a Personnel Security Questionnaire, stated to officials of the United States Department of Defense that he was employed by Square D of Los Angeles, California, whereas in truth and fact as defendant ESMAIL YERMIAN then and there well knew, he had never been employed by Square D of Los Angeles, California.

A TRUE BILL

/S/ _____

Foreperson

/s/ _____

ANDREA SHERIDAN ORDIN
United States Attorney

TESTIMONY OF RUBY LANE

RUBY LANE, called as a witness on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated. State your full name and spell your last name for the record.

THE WITNESS: Ruby Lane, L-a-n-e.

DIRECT EXAMINATION

BY MR. DeWITT:

Q Miss Lane, could you tell us where you are employed.

A At Gulton Industries.

Q How long have you been employed there?

A 15 years.

[46A] Q Could you briefly describe your duties there.

A I am Executive Secretary to the President of our division. I am also the Security Officer.

Q Could you tell us in a little more detail about your role as a security officer.

A I am responsible for the classified material that comes in and out of our facility. I assist the employees in obtaining security clearance.

MR. DeWITT: I would request Government's Exhibits 1, 2, 3 and 4 be placed before the witness.

THE CLERK: Marked for identification and before the witness. (Plaintiff's Exhibits 1, 2, 3 and 4 were marked for identification.)

BY MR. DeWITT:

Q Calling your attention first to Government's Exhibit No. 1, do you have that?

A Yes.

Q Are you familiar with this document?

A Yes, I am.

Q Can you tell us what this is?

A This is a work sheet for preparation of a Personnel Security Questionnaire, which we give to all [47] of our employees who we want to have cleared. We give them a work sheet along with an instruction sheet and ask them to fill out the work sheet per the instruction sheet.

Q Calling your attention now to Exhibit 4, this is the instruction sheet to which you just referred?

A Yes, it is.

Q Do you recognize the name, Esmail Yermian?

A Yes.

Q And was Mr. Yermian employed at Gulton?

A Yes, that is correct.

Q What did he do there?

A He worked in our engineering department.

Q Is Mr. Yermian in the courtroom today?

A Yes, he is.

Q Could you identify him for us?

A Yes. He is sitting right over here (indicating.)

THE COURT: The record will indicate the witness has identified the defendant, Esmail Yermian.

BY MR. DeWITT:

Q Again referring to Exhibit 1, did you ask Mr. Yermian to complete this work sheet?

A Yes.

Q Can you recall when you asked him to complete it?

[48] A I do not have an exact date, but it would have been around the middle of April.

Q Did you give a copy of the instructions, that is, Government's Exhibit 4, to Mr. Yermian at the time you asked him to complete the work sheet?

A Yes.

Q And can you tell us whether or not Mr. Yermian did complete the work sheet?

A Yes, he did complete the work sheet and return it to me within two or three weeks.

Q And after he returned it, did you examine the work sheet?

A Yes. I went through it to see if he had left anything out or if there was anything that needed clarification.

There were a couple of items that I asked him about, and these are the ones that are written in my hand on the exhibit.

Q When you added this information, did you talk to the defendant about it before you added it?

A Yes.

Q Did you talk to him in person or over the telephone? How did you talk to him?

A I talked to him in person.

[49] Q After the defendant returned the work sheet and you talked to him and you added the information, could you tell us what you did with the work sheet as it was amended by you.

A I typed the form DD48 which is a Personnel Security Questionnaire. I typed that from the work sheet, filling in all the proper information. I then returned it to him asking him to check it for any errors or typographical errors. And I asked him to complete the confidential section, which is Section No. 3 and return it to me for mailing.

Q Calling your attention to Government's Exhibit No. 2, do you recognize that form?

A Yes.

Q And is that the form that you typed from the work sheet which Mr. Yermian gave to you?

A Yes, it is.

Q And is that your signature which appears at the bottom of the first page?

A Yes.

Q And in typing this form, Form 48, did you use any source of information other than the work sheet and the handwritten notes which you made during your conversation with Mr. Yermian?

[50] A No. That is the only information I used.

Q Calling your attention to Government's Exhibit No. 3, are you familiar with this document?

A Yes.

Q Is that your signature, again, on the first page?

A Yes.

Q Is that your signature on the last page?

A Yes.

Q Did you type this, the original document also?

A Yes. I typed it from the information from the first form, the DD48.

Q Where did you get the information to type this second form, Form 49?

A Most of the information I took from the DD48. However, they had requested additional information and I obtained that from Don.

Q Did you tell the defendant, Mr. Yermian, that you were preparing Form 49?

A Yes. I told him that I had received a letter from them and they had asked for the additional information.

Q Did you give the defendant any additional instructions as to how to complete Form 49?

[51] A No, I did not.

Q Did the defendant—When you were in the process of completing Form 49, did the defendant request that any of the information that was contained on Form 48 be changed so that Form 49 would be different than Form 48?

A Yes.

Q After typing Form 49, what did you do?

A I again returned it to him asking him to check it for errors, and asked that after he had done that, that if there were none to be corrected, that he complete again Section 3, which is a confidential section. I asked him to return it to me.

MR. DeWITT: Your Honor, could I approach the clerk? I have an additional exhibit.

THE COURT: All right.

MR. DeWITT: This will be Government's Exhibit No. 7.

THE CLERK: Plaintiff's 7 marked and placed before the witness. (Plaintiff's Exhibit 7 was marked for identification.)

BY MR. DeWITT:

Q Now, Miss Lane, do you recognize Government's Exhibit No. 7?

[52] A Yes.

Q Can you tell us what that is, please?

A This is a pre-addressed envelope which is used to mail the security clearances into the Defense Industrial Security office.

When the employee completes all of his forms, he brings them to me and in front of him, before me, is turned over and witnessed by me on the back of the form. There is a

place for a witness. And there is a place for him to sign and to date.

The form is then placed in this envelope with his fingerprints. He seals the form and signs it across the back and it is put into the mail.

MR. DeWITT: At this time I would move Government's Exhibits 1, 2, 3, 4 and 7 into evidence.

THE COURT: Any objection?

MR. ZARKY: No, your Honor.

THE COURT: 1, 2, 3, 4 and 7 in evidence. (Plaintiff's Exhibits 1, 2, 3, 4 and 7 were received in evidence.)

MR. DeWITT: I have no further questions of this witness.

THE COURT: Cross-examination?

[53] MR. ZARKY: One moment, your Honor. (Brief pause.)

CROSS-EXAMINATION

BY MR. ZARKY:

Q Miss Lane, about how large is Gulton?

A We have approximately 260 employees.

STIPULATION

It is hereby stipulated by and between the plaintiff, United States of America, the defendant, Esmail Yermian, and the defendant's attorney, Deputy Federal Public Defender Alan Zarky as follows:

"1. The defendant prepared the Work Sheet for Preparation of Personnel Security Questionnaire; the handwriting which appears on the Work Sheet is the defendant's [54] except for the words 'Square, s-q-u-a-r-e, D' in Block 10(c) and 'Houston, Texas' in Block 10(d).

"2. Plaintiff's Exhibit No. 1, the Work Sheet for Personnel Security Questionnaire, Plaintiff's Exhibit No. 2 (Personnel Security Questionnaire Form DD48) and Plaintiff's Exhibit No. 3 (Personnel Security Questionnaire Form DD49) are true and correct copies of the original documents; however, at the defendant's request, certain personnel information not relevant to the facts of this case, have been deleted from Plaintiff's Exhibit Nos. 1, 2 and 3.

"3. The handwriting in Part III and the signature in Part IV of the Personnel Security Questionnaire Form DD 48 is that of the defendant.

"4. The handwriting in Part III and the signature in Part IV of the Personnel Security Questionnaire Form DD49 is that of the defendant.

"5. Marilyn Smith, Secretary to the Regional Vice-President of the Square D Company, Los Angeles, California, is deemed to have been called as a witness and testified as follows: That she made a thorough search of the employment record of the Square D Corporation from the period of from June, 1971, through March, 1973, and was unable to find any record that the defendant was employed [55] there at that time or any time.

"6. Robert R. Williams, President of Bell Helicopter International, Fort Worth, Texas, is deemed to have been called as a witness and to have testified as follows:

(a) That the Personnel Department of Bell Helicopter International made a thorough search of its employment records for the period February, 1975, through March, 1979, and was unable to find any record that the defendant was employed there at that time or at any time;

(b) Bell Helicopter International had never had a facility in Houston, Texas.

"7. The defendant is the same Esmail Yermian referred to in the May 4, 1978, Judgment and Probation/Commitment Order."

This has been stipulated to by the government, the defendant himself, and his counsel.

As you have been previously instructed, as to those facts, you must deem that they have been conclusively proved.

Call your next witness.

MR. DeWITT: Your Honor, at this time, we would ask that Exhibit No. 5, the stipulation, be admitted into evidence.

TESTIMONY OF ESMAIL YERMIAN

ESMAIL YERMIAN, called as a witness on his own behalf, having been previously sworn, resumed the stand and testified further as follows:

THE CLERK: Please state your full name, spelling your last.

THE WITNESS: Esmail Yermian, Y-e-r-m-i-a-n.

[58] DIRECT EXAMINATION

BY MR. ZARKY:

Q What is your occupation?

A I am an engineer.

Q Were you employed at Gulton Industries?

A Yes, I was.

Q Please tell the jury what you did for Gulton Industries.

A I was involved with scheduling and manpower planning.

Q And was that scheduling and manpower planning involved in any particular projects?

A Yes. It involved design of power supplies.

Q Where are you now employed, Mr. Yermian?

A I am not employed at this time. I was fired from my job because of this case.

Q Was that your job at Gulton Industries?

A That is correct.

Q At some time did you file an application for employment with Gulton Industries?

A Yes, I did.

Q Mr. Yermian, did you make any false statement on that application?

A Yes, I did.

[59] Q What were those false statements, Mr. Yermian?

A They were with respect with my previous employment experience.

Q Can you please be more specific when you say with respect to—

A I had indicated in my employment application that I was employed in two companies which, indeed, I had not.

Q This employment application, that is not any of the forms which have been discussed or introduced into evidence; is it?

A No, it isn't.

Q Specifically, were those false statements that you had worked for certain companies that you hadn't?

A Yes.

Q Can you tell the jury what those companies were?

A I had indicated on my employment application that I had worked for Bell Helicopter and Square D and, indeed, I had not worked for those two companies.

Q Did you make any other false statements on that employment application?

A Yes, I did.

Q What was that false statement?

[60] A I had not indicated that I was arrested or convicted previously.

Q And had you been?

A Yes, I was.

Q What were you convicted of?

A Mail fraud.

Q What did that mean? What did you do that constituted mail fraud?

A I had collected unemployment insurance which I was not entitled to.

Q Mr. Yermian, this employment application, why did you make these false statements?

A I needed to get a job. My father was and is suffering from cancer and I was running very high medical bills.

MR. DeWITT: Objection.

THE COURT: The objection is sustained.

That will go out and the jury is admonished to disregard it as irrelevant.

BY MR. ZARKY:

Q Mr. Yermian, at the time you applied to Gulton Industries, were you employed?

A No, I was not.

Q Why were you not employed at that time?

[61] MR. DeWITT: Objection.

THE COURT: The objection is sustained.

BY MR. ZARKY:

Q Did you at some point, then, start to work with Gulton Industries?

A Yes, I did.

Q Sometime later—Excuse me, your Honor. May I get the exhibit list? (Brief pause.)

May Government's 1, 2 and 3 be placed before the witness, please.

THE CLERK: 1, 2, and 3 in evidence before the witness.

THE WITNESS: Okay.

BY MR. ZARKY:

Q Directing your attention to Government 1, it's a work sheet. Sometime did you fill out that work sheet?

A Yes, I did.

Q Did you make false statements on that work sheet?

A Yes, I did.

Q What were those false statements?

A Again with respect to my previous employment [62] record.

Q Were they the same false statements that you made on your employment application?

A Yes, that is correct.

Q Why did you make these false statements?

A I thought I was stuck with the information that I had already given to Gulton.

Q Mr. Yermian, when you filled out this work sheet, what did you believe the purpose of this work sheet was?

A My understanding was that this information was going to be used by Gulton and by Gulton only for the classification of their employee as to who would be working on what job.

Q At the time that you filled out this work sheet, did you know that the information on it would be sent to the Department of Defense?

A No, I did not.

Q Had anyone told you that it would be sent to the Department of Defense?

A No, they did not.

Q Did you believe it would be sent to any United States Government agency?

A No, they did not.

[63] Q Did you believe that it would be sent to any United States Government agency?

A No, I did not believe it.

Q Had you ever applied for a United States Department of Defense security clearance before this?

A No, I have not.

Q At this time, were you familiar with the procedures for getting a United States Department of Defense security clearance?

A No, I was not.

Q What, specifically, were you told when you were asked to fill out this form?

A I was told that this is a Personnel Security Questionnaire and I have to fill it out.

Q After you filled it out, what did you do with it?

A I returned it to Miss Ruby Lane.

Q And as you have heard her testify, did you discuss some of your answers with her?

A Yes, I did. I told her that I wasn't sure about some of the previous accuracies, about some of the dates, previous addresses and some of the dates and so on.

Q What happened next?

[64] A Miss Lane typed the information and returned it to me for signature.

Q What, if anything, did she tell you when she returned it to you for signature?

A She told me to look it over, see if there was any mistake. And I told her that I trusted her typing and I thought that the information that I had put on the work sheet would be the same.

Q What did you mean you trusted her typing?

A I thought it would be free of error. I told her that I trust her typing would be free of error.

Q Did you then fill out the Part III of that application?

A Yes, I did.

Q And in filling it out, did you make any false statements?

A Yes, I did.

Q Was this the same false statement that you had made on your employment application?

A Yes.

Q Why did you make that false statement?

A Again, I thought that I was stuck with the information that I had given them on my employment application; that it would have jeopardized my job anyway, [65] with Gulton.

Q Did you then sign the form?

A Yes, I did.

Q Before signing the form, did you look it over at all?

A No, I did not.

Q Did you even glance over it?

A Just quickly.

Q Before signing it, did you read over the entire form carefully?

A No, I did not.

Q Specifically, did you read over Part IV, the fine print in Part IV?

A No, I did not.

Q Why didn't you read over the entire form carefully, Mr. Yermian?

A At that time, my boss—I had to go to a meeting with my boss in a hurry. And he asked me to prepare something quickly for him. His secretary was paging me, so I just signed it and returned it to Miss Lane.

Q Were there any other reasons that you did not read it over carefully before signing it?

A I thought that the information that I had given on the work sheet would be the same.

[66] Q Did the form cover the same questions that the work sheet had covered?

A I don't know. I believe so.

Q Why don't you look at Government's 1 and 2 now.

A Yes. They covered the same questions.

Q And at the time you saw Government's Exhibit 2, DD Form 48, did you know that that form was going to be submitted to the Department of Defense?

A No, I did not.

Q Had anyone told you that it would?

A No one.

Q Did you notice before signing it the words "Department of Defense" in the upper left-hand corner of the first page?

A No, I did not.

Q Who did you think would be using that information?

A I thought that the information was going to be used by Gulton and Gulton only, for the classification, as I said before, of the people who would be working on what project. They would be classifying them as to who would be working on what project.

Q Now, at some later point, did Miss Lane discuss [67] with you Government's Exhibit 3, DD49?

A Yes, they did.

Q You said "they." I'm asking you now about Miss Lane.

A Yes, she did.

Q Did she request additional information from you?

A Yes, she did.

Q Did you give it to her?

A Yes, I did.

Q What happened next?

A Again, she typed it and she returned it to me for signature.

Q Did you again fill out Part III?

A Yes, I did.

Q Did you again sign it?

A Yes, I did.

Q Now, this time, before signing it, did you read it over carefully?

A No, I did not.

Q Tell the jury why you did not read over this form carefully this time before signing it.

A Because it looked the same in format and in content and I thought it would be the same thing. And [68] I had given her the information already. Since I had signed the previous one, so I signed this one.

Q Now, at the time that you signed Government's Exhibit 3, Form 49, did you know that this information would be sent to any agency of the United States Government?

A No, I did not.

Q When did you first learn that, in fact, the purpose of all these questions was for Department of Defense security classification?

A Sometime later when Miss Lane came to me and informed me that the security clearance had been—been denied. And she gave me a copy of it.

Q Sometime after that, did you talk to any agents of the Federal Bureau of Investigation?

A Yes, I did.

Q Did you discuss with them your previous employment and your convictions?

A Yes, I did.

Q Were you truthful with them about your previous employment and your convictions?

A Yes, I was.

Q Mr. Yermian, could you please explain to the jury how it is on the one hand you were truthful with the FBI but on these forms you were not truthful.

[69] A When the FBI agents came to my office, they identified themselves as FBI agents and government agents. And I did not want to lie to the government agents. I knew that they would and could verify the information that I was going to give them.

Whereas, in the case of the application or the Personnel Security Questionnaire, I thought it was for use by Gulton and Gulton only. I did not think that they would have either the resources or the inclination to verify this information.

MR. ZARKY: Nothing further, your Honor.

THE COURT: Cross-examination?

MR. DeWITT: One moment, please, your Honor. (Brief pause.)

CROSS-EXAMINATION

BY MR. DeWITT:

Q Mr. Yermian, isn't it a fact that someone explained to you that you were required to have a security clearance in order to work at Gulton?

A No, they did not.

Q Then why were you filling out these forms if no one explained to you that it was for security clearance?

[70] A Miss Lane came to me and handed over the applications to me and said this is for the work sheet. And she

said this is for personnel security—this is a Personnel Security Questionnaire and we have to fill it out.

Q Did you know that Gulton was a Department of Defense contractor?

A When I applied for my job at Gulton, I did not know.

Q Did you know that as a Department of Defense contractor you would have to have access to secret or classified information?

A I did not.

Q You stated that you completed Form 48 and Form 49 and that you signed those; is that correct?

A That is correct.

Q Calling your attention to the bottom of the first page where the information was typed in by Ruby Lane, did you read this material where it references the fact that you are required to have access to classified material?

A At the time when she returned it to me, no, I did not read it.

Q Calling your attention to Question No. 26—

A On which form?

[71] Q Form 48.

Is that your signature which appears there on Line 26?

A Yes, it is.

Q When you signed your name there, didn't you realize that you were granting permission to the Department of Defense to obtain copies of your medical history?

A No. I did not read that.

Q Isn't that what that says there?

A It does say that.

Q Calling your attention, now, to Form 49, Government's Exhibit No, 3, once again, you reviewed this document; is that correct?

A She returned it to me for signature and she told me to look at it to see if there was any error in it.

Q When you looked at it, you did not notice the words "Department of Defense" at the top of the form?

A I glanced at that form quickly and I did not read it carefully. I thought that the information that I had given her would be the same as the original application.

Q When you reviewed the document, did you notice the reference to the fact that you would have to have access [72] to classified material?

A No, I did not.

Q And again, calling your attention to Line 26 on Form 49, did you find that?

A Yes, I did.

Q When you signed it, didn't you realized that you were granting permission to the Department of Defense to release medical information?

A I did not read those statements. I just signed where it says "Signature of Employee."

Q Calling your attention, now, to Part IV.

A On which form, sir?

Q Form 49.

A Yes.

Q You signed this document indicating that you had read it; is that correct?

A Which page, now, sir?

A Page 5.

A Page 5. Again, I did not read any of this. I just looked at where it says "Signature of Employee," and signed it.

Q When Miss Lane returned the typed forms to you, isn't it a fact that she returned them with an envelope for mailing?

[73] A If she did, I don't recall. I do not recall that she ever gave me a—they ever gave me an envelope.

Q Do you have Government's Exhibit No. 7 there?

THE CLERK: Plaintiff's Exhibit 7 before the witness.

BY MR. DeWITT:

Q Have you ever seen this exhibit before?

A I am seeing it now. I do recall that Miss Lane put it in an envelope. I do not recall if it was this envelope or any other envelope.

Q When you say she put it in the envelope, what are you talking about, Form 48 or Form 49?

A I don't remember which one it was. She put it in an envelope.

Q On both occasions, did she put it in an envelope?

A On both occasions.

Q Isn't it a fact that she gave you the envelope and you put the form in the envelope?

A I don't recall this.

Q Isn't it a fact you had to sign the envelope before you mailed it?

A I did not mail any envelope, sir.

Q I am asking you if you would look at the [74] envelope, sir. What does the seal on the back say? Doesn't it indicate that you have to sign that envelope as you put the application inside?

A Again, sir, I returned the application to her and she put it in the envelope. I do not recall ever having received an envelope from her.

Q When she put it in the envelope, did you notice that the postage and fees were going to be paid by the Defense Logistics Agency?

A No. I did not, sir.

Q Did you notice that the envelope was to be mailed to the Defense Industrial Security Clearance Office?

A I did not know that.

MR. DeWITT: One moment, your Honor. (Brief pause.)

Q Isn't it a fact that Miss Lane came to you after you prepared the work sheet to discuss the application with you?

A Sometime later she came and she told me that this was the wrong form and that—

Q No. I am talking about the work sheet, the handwritten work sheet.

A Yes. Okay.

Q You completed that form and gave it to her; [75] is that correct?

A That's correct.

Q Before you saw anything else in typewritten form, she came to your office and she talked to you about that form; is that correct?

A I do not remember what the conversation was about.

Q But she did talk to you?

A I don't remember. I don't recall that, sir.

MR. DeWITT: One moment, your Honor. (Brief pause.)

Q Now, the basis for your conviction in 1978 for mail fraud was because you filled out fraudulent government forms; is that correct?

A The basis was that I had collected unemployment insurance which I was not entitled to.

Q In order to collect that unemployment insurance, you had to fill out certain forms; didn't you?

A Yes.

Q How many forms did you fill out in that case?

A I don't remember.

Q How many insurance claims did you claim?

A I don't remember.

Q Wasn't it, in fact, 17 employees that you [76] were claiming unemployment compensation for?

A It was more than one, but I do not remember exactly.

Q And to collect that unemployment insurance, didn't you have to fill out certain forms?

A Yes.

Q Weren't those government forms?

A Well, they were forms that you were required to fill out for requesting unemployment insurance.

MR. DeWITT: No further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. ZARKY:

Q Mr. Yermian, you testified on direct that you did have a conversation with Miss Lane about information on the work sheet after you filled it out.

Is that the conversation you had with her in your office?

A The conversation after I filled out the work sheet?

Q After the work sheet.

A After the work sheet, I returned the application to her and I told her that I was not sure about [77] some of the dates and some of the addresses.

Q So you do remember that conversation?

A Yes, I do.

MR. ZARKY: Nothing further.

THE COURT: Recross?

MR. DeWITT: One moment, your Honor. (Brief pause.)

RECROSS EXAMINATION

BY MR. DeWITT:

Q When you had this conversation with Miss Lane, did you make any changes in the information as you had originally given it to her?

A I don't remember that, either. I just told her that I was not sure about some of the dates.

Q Did you change some of the addresses on the form?

A I don't remember that. I don't remember if I did or not. But I did tell her that I was not sure about some of these addresses and some of these dates.

Q So you were aware that she was asking you whether or not the information was complete; is that correct?

A Excuse me?

Q Strike the question.

[78] Did she come and talk to you?

A Yes.

Q You did discuss the form; is that correct?

A Well, when I handed the form to her I told her that I was not sure about some of these addresses and some of these dates.

Q And she came back to your office and you talked about that; is that correct?

A A second time?

Q At any time.

A After I handed over the form to her, we had a conversation that the essence of which was, I was not sure of some of these dates and some of these addresses, previous addresses.

MR. DeWITT: No further questions, your Honor.

THE COURT: Redirect?

MR. ZARKY: No, your Honor.

EXAMINATION BY THE COURT

THE COURT: Mr. Yermian, in the Exhibit 1, the work sheet—

THE WITNESS: Yes, sir.

THE COURT: Did you answer Question 16?

Was that your mark that was put on Question 16?

[79] THE WITNESS: On the work sheet?

THE COURT: On the work sheet.

THE WITNESS: Yes. That is my mark, sir.

THE COURT: I take it you read the question about being granted a security clearance previously when you answered "No"?

THE WITNESS: That is correct.

THE COURT: And the B question to that, if you had ever terminated employment while requesting a security clearance?

THE WITNESS: Yes. I did mark that, sir.

THE COURT: Did Miss Lane ask you to fill out Section 3 by yourself?

THE WITNESS: Section 3?

THE COURT: In the typewritten Exhibit 2.

THE WITNESS: Yes, she did.

THE COURT: And in that did you read the first paragraph there indicating that the information you are about to give in part III was privileged between you and the government?

THE WITNESS: No, I did not, sir. I only looked at the places where it had the appearance of a question and just went to answer the questions.

THE COURT: You did not read the instructions prior to that?

[80] THE WITNESS: No, sir, I did not.

THE COURT: You answered the Question 24, "Have you ever had a security clearance suspended, denied or revoked?"

THE WITNESS: Yes, I did.

THE COURT: And you answered that yourself?

THE WITNESS: Yes, I did.

THE COURT: That was not typed in by anybody; was it?

THE WITNESS: No, that is—I checked it "No."

THE COURT: And on Exhibits 2 and 3, that is on the DD48 and 49, did you sign those documents at the end?

THE WITNESS: What page, sir?

THE COURT: Exhibits 2 and 3.

THE WITNESS: Yes. I did sign those.

THE COURT: And in 49, did you fill out that document in your handwriting also?

THE WITNESS: Yes, that's right.

THE COURT: On both 48 and 49 did you read the certification for your signature?

THE WITNESS: No, I did not, sir.

THE COURT: Or the note, "Penalty for misrepresentation"?

[81] THE WITNESS: I did not, sir.

THE COURT: Did you see that?

THE WITNESS: Well, as I said, I went right down to the places where it says "Signature of Employee" and signed it. I did not—

THE COURT: You did not read anything on Part IV, none of the language in Part IV?

THE WITNESS: No, sir, I did not.

THE COURT: You didn't notice that as you were coming down and you got down to where it says "Signature of Employee"?

THE WITNESS: No, I did not.

THE COURT: On either 48 or 49?

THE WITNESS: No.

THE COURT: Anything further?

MR. ZARKY: No.

THE COURT: Step down, Mr. Yermian.

EXCERPT OF JURY INSTRUCTIONS

Each count of the indictment charges a violation of Section 1001 of Title 18, United States Code, which provides in part:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme, or device, a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, . . ."

Shall be guilty of an offense against the laws of the United States.

Three essential elements are required to be proved in order to establish the offense charged in the indictment:

FIRST: That the defendant made and used, or caused to be made and used, a false writing or document in relation to a matter within the jurisdiction of a department or agency of the United States, as charged;

SECOND: That he did such act or acts with knowledge of the accused that the writing or document was false or fictitious and fraudulent in some material particular, as alleged;

THIRD: That the defendant knew or should have known that the information was to be submitted to a government agency;

FOURTH: That he did such act or acts knowingly and wilfully.

WORKSHEET FOR PREPARATION OF PERSONNEL SECURITY QUESTIONNAIRE, DD FORMS 48 or 49

DATE: 5-6-79

PART I

1. LAST NAME - FIRST NAME - MIDDLE NAME: YERMIAN ESMAIL —

2. SEX: MALE

3. ALIASES (AND ALL FORMER NAMES): NONE (Yes)

4. SOCIAL SECURITY NUMBER:

5. MONTH, DAY, YEAR OF BIRTH:

6. PLACE OF BIRTH:

7. SERVICE NUMBER:

INSTRUCTIONS TO EMPLOYEE: This is a worksheet to assist in preparation of the final Personnel Security Questionnaire. The final version of the Personnel Security Questionnaire contains entries for additional information which you must complete in private. Part II of this worksheet need not be completed by your employer. It will be completed by your employer on the final version. After you complete this worksheet, give it to your employer so that it can be used as a guide for completion of the final version.

TYPE OR PRINT ALL ANSWERS: If more space is required, attach additional sheets, identifying by corresponding block number. FORM WILL NOT BE ACCEPTED UNLESS COMPLETELY AND PROPERLY EXECUTED. Questions which do not apply shall be marked "None."

8. RELATIVES	DATE AND PLACE OF BIRTH	PRESENT ADDRESS	CITIZENSHIP
a. FATHER			
b. MOTHER (Full Maiden Name)			
c. SPOUSE (If all Maiden Name)			

9. RESIDENCES (List all from 18th birthday or during past 15 years, whichever is shorter. If under 18, list present and most recent addresses.)

a. FROM	b. TO	c. NUMBER AND STREET	d. CITY	e. STATE

10. EMPLOYMENT (List all from 18th birthday or during past 15 years, whichever is shorter. If under 18, list present and most recent employment.)

a. FROM	b. TO	c. EMPLOYER	d. PLACE
2/75	2/79	ZELL-IRAN CENTURY INDUSTRIAL Inc D	IRAN - Tehran, Iran LA, CALIF LA CALIF
3/73	2/75		
6/[illegible]	3/[illegible]		

11. LAST CIVILIAN SCHOOL

a. FROM	b. TO	c. NAME	d. PLACE
9/1973	2/1975	UNIVERSITY OF SO. CALIF	LOS ANGELES, CALIF

PART II (TO BE COMPLETED BY EMPLOYER)

TO:
Defense Industrial Security Clearance Office
Defense Supply Agency
Box 2499
Columbus, Ohio 43216

NAME AND ADDRESS OF EMPLOYER (If a subsidiary, include name of parent company)

JOB TITLE AND DESCRIPTION OF EMPLOYEE'S DUTIES WHICH REQUIRE ACCESS TO CLASSIFIED INFORMATION

[redacted]

CONTRACT NUMBER, WHEN APPLICABLE

SECURITY CLASSIFICATION OF MATERIALS OR INFORMATION EMPLOYEE WILL HAVE ACCESS TO

Plaintiff's Exhibit No. 1
Page 1 of 3

CLEARANCE REQUESTED IS: ☐ INTERIM ☐ UNDER PAR. 28I, ISM

IF SUBJECT IS AN IMMIGRANT ALIEN, HAS HE PRESENTED ALIEN REGISTRATION RECEIPT CARD (Form I-151)?

☐ YES ☐ NO

I CERTIFY THAT THE ENTRIES MADE BY ME ABOVE ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND ARE MADE IN GOOD FAITH.

SIGNATURE OF EMPLOYEE OR DESIGNATED REPRESENTATIVE

12. EDUCATION (Account for all civilian and military academics)

YEARS (Month if known) FROM	TO	NAME AND LOCATION OF SCHOOL	GRADUATE YES	GRADUATE NO	DEGREE
67	3/75	UNIVERSITY OF SO. CALIFORNIA LA, CALIF	✓		MBA
57	6/71	CALIFORNIA STATE UNIVERSITY LA, CALIF	✓		BS.

14. ORGANIZATIONAL MEMBERSHIP

LIST ALL ORGANIZATIONS EXCEPT LABOR UNIONS AND EXCEPT ORGANIZATIONS REFERRED TO IN ITEM 27 BELOW IN WHICH YOU HOLD OR HAVE HELD MEMBERSHIP. IF NONE, SO STATE.

NAME AND ADDRESS	TYPE	OFFICE HELD	FROM (Date)	TO (Date)

15. MILITARY SERVICE

a. COUNTRY	BRANCH OF SERVICE	SERVICE NUMBER	FROM (Date)	TO (Date)

ARE YOU A MEMBER OF A RESERVE COMPONENT? ☐ YES ☒ NO (If answer is "YES", furnish service, component and current status under Item 31, "Remarks".)

b. LOCAL DRAFT BOARD (United States) AND ADDRESS [redacted]

c. SELECTIVE SERVICE NO.

d. CLASSIFICATION

PREVIOUS CLEARANCE

HAVE YOU EVER BEEN PREVIOUSLY GRANTED A SECURITY CLEARANCE? (If answer is "YES", indicate level of clearance, when cated, by whom and where employed at that time under Item 31, "Remarks".) ☐ YES ☒ NO

HAVE YOU EVER TERMINATED EMPLOYMENT WHILE A REQUEST OR APPLICATION FOR A SECURITY CLEARANCE WAS PENDING? (If answer is "YES", furnish name and address of employer under "Remarks". If termination resulted from a reduction in force, so indicate. If furnish details under "Remarks". If you since have been granted a clearance by the Government, indicate under Item 31, "Remarks" e date, level of clearance and where employed.) ☐ YES [redacted]

17. OTHER RELATIVES

a. LIST CHILDREN, BROTHERS, SISTERS (16 years and older) AND FORMER SPOUSE(S).

RELATION	NAME IN FULL	ADDRESS (Enter "deceased" if no longer living)	PLACE AND DATE OF BIRTH	PRESENT CITIZENSHIP

b. LIST OTHER LIVING RELATIVES AND RELATIVES OF SPOUSE WHO ARE NOT UNITED STATES CITIZENS

18. FOREIGN COUNTRIES VISITED OR RESIDED IN

CITY AND COUNTRY	DATE LEFT U.S.	DATE RETURNED U.S.	PURPOSE AND TYPE OF VISA

19. LIST EACH FOREIGN GOVERNMENT, FIRM, CORPORATION OR PERSON FOR WHOM YOU ACT OR HAVE ACTED AS A REPRESENTATIVE, OFFICIAL OR EMPLOYEE IN THE PAST 5 YEARS. LIST ALL COMMUNIST GOVERNMENTS, FIRMS OR CORPORATIONS FOR WHOM YOU HAVE EVER ACTED IN SUCH CAPACITY. ATTACH A STATEMENT, AS REQUIRED BY PARAGRAPH 308, ISM, FULLY DESCRIBING EACH AFFILIATION. *(If none, so indicate.)*

20. REFERENCES *(Give five personal references, stating business address of all references, if known. Do not include relatives, former employers, or persons living outside the United States.)*

NAME	YEARS KNOWN	STREET AND NUMBER	CITY	STATE

21. REMARKS *(If additional space is needed, continue on plain paper.)*

FURTHER INSTRUCTIONS: DO NOT COMPLETE PARTS III OR IV AT THIS TIME. Return this partially completed form to your employer who will review it to assure all entries are complete and the form is properly filled in. After return, proceed with completion of Parts III and IV.

DSA FORM 787
JAN 68

DEPARTMENT OF D[illegible]NSE

PERSONNEL SECURITY QUESTI[illegible]NAIRE *(INDUSTRIAL)*

FORM APPROVED OMB NO. 2[illegible]R046

DATE: May 22, 1979

DD FORM 1 JAN 74 48

USE 1 JUL 69 EDITION UNTIL EXHAUSTED

PART I

1. LAST NAME — FIRST NAME — MIDDLE NAME: Yermian Esmail NMI

2. SEX: Male

3. ALIAS(ES) AND ALL FORMER NAME(S): (Don) Nickname

4. SOCIAL SECURITY NUMBER:

5. MONTH, DAY, YEAR OF BIRTH:

6. PLACE OF BIRTH:

7. SERVICE NUMBER:

INSTRUCTIONS TO EMPLOYEE: DO NOT FILL IN ANY PORTION OF THIS FORM UNLESS YOU ARE EMPLOYED AND ON THE PAYROLL OF THE EMPLOYER FROM WHOM YOU RECEIVE THIS FORM. This form is in four (4) parts. Part II must be completed by your employer before you complete the other parts. You must complete Part III in private. Before filling in any part, you should familiarize yourself with all questions. Do not sign this form without first reading the instructions in Part IV. TYPE OR PRINT ALL ANSWERS. If more space is required, attach additional sheets, identifying by corresponding block number. FORM WILL NOT BE ACCEPTED UNLESS COMPLETELY AND PROPERLY EXECUTED. Questions which do not apply shall be marked "None."

RECEIVED 29 JUL 11 AM 8:00 DEFENSE INDUSTRIAL SECURITY CLEARANCE OFFICE

8 RELATIVES	DATE AND PLACE OF BIRTH	PRESENT ADDRESS	CITIZENSHIP
a. FATHER			
b. MOTHER (Full Maiden Name)			
c. SPOUSE (Full Maiden Name)			

9 RESIDENCES (List all from 18th birthday or during past 15 years, whichever is shorter. If under 18, list present and most recent addresses.)

a. FROM	b. TO	c. NUMBER AND STREET	d. CITY	e. STATE

10 EMPLOYMENT (List all from 18th birthday or during past 15 years, whichever is shorter. If under 18, list present and most recent employment.)

a. FROM	b. TO	c. EMPLOYER	d. PLACE
3/79	Present	Gulton Industries, Inc.	13041 Cerise Ave.-Hawthorne, Ca.
2/75	3/79	Bell Helicopter Int'l.	Iran - Houston, Texas
3/73	2/75	Century Industrial	Los Angeles, Ca.
6/71	3/73	☐ D (Square D)	Los Angeles, Ca.

11 LAST CIVILIAN SCHOOL

a. FROM	b. TO	c. NAME	d. PLACE
1973	1975	University of So. Calif.	Los Angeles, Ca.

PART II (TO BE COMPLETED BY EMPLOYER) 06569

TO: Defense Industrial Security Clearance Office, Defense Supply Agency, Box 2499, Columbus, Ohio 43216

NAME AND ADDRESS OF EMPLOYER (If a subsidiary, include name of parent company): Gulton Industries, Inc., Engineered Magnetics Div., 13041 Cerise Ave.-Hawthorne, Ca. 90250

9 TITLE AND DESCRIPTION OF EMPLOYEE'S DUTIES WHICH REQUIRE ACCESS TO CLASSIFIED INFORMATION: Sr Engineer - Need-to-know based on requiring access to classified material in order to perform job duties.

CONTRACT NUMBER, WHEN APPLICABLE: N/A

SECURITY CLASSIFICATION OF MATERIALS OR INFORMATION EMPLOYEE WILL HAVE ACCESS TO: SECRET

I CERTIFY THAT THE ENTRIES MADE BY ME ABOVE ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND ARE MADE IN GOOD FAITH.

SIGNATURE OF EMPLOYER OR DESIGNATED REPRESENTATIVE: [signature]

Plaintiff's Exhibit No. 2
Page 1 of 5

PART I (Continued)

12 EDUCATION (Account for all civilian and military academic)

YEARS (Month if known) FROM	TO	NAME AND LOCATION OF SCHOOL	GRADUATE YES	GRADUATE NO	DEGREE
1973	2/75	University of So. Calif.-Los Angeles, Ca.	X		MS
1967	6/71	California State University-Los Angeles, Ca.	X		BS

14 ORGANIZATIONAL MEMBERSHIP

LIST ALL ORGANIZATIONS EXCEPT LABOR UNIONS AND EXCEPT ORGANIZATIONS REFERRED TO IN ITEM 27 BELOW IN WHICH YOU HOLD OR HAVE HELD MEMBERSHIP. IF NONE, SO STATE.

NAME AND ADDRESS	TYPE	OFFICE HELD	FROM (Date)	TO (Date)

15 MILITARY SERVICE

a COUNTRY	BRANCH OF SERVICE	SERVICE NUMBER	FROM (Date)	TO (Date)

b. ARE YOU A MEMBER OF A RESERVE COMPONENT? ☐ YES ☒ NO (If answer is "YES", furnish service, component and current status under Item 21, "Remarks".)

c. LOCAL DRAFT BOARD (Local State) AND ADDRESS	d. SELECTIVE SERVICE NO.	e. CLASSIFICATION

16 PREVIOUS CLEARANCE

a. HAVE YOU EVER BEEN PREVIOUSLY GRANTED A SECURITY CLEARANCE? (If answer is "YES", indicate level of clearance, when granted, by whom and where employed at that time under Item 21, "Remarks".) ☐ YES ☒ NO

b. HAVE YOU EVER TERMINATED EMPLOYMENT WHILE A REQUEST OR APPLICATION FOR A SECURITY CLEARANCE WAS PENDING? (If answer is "YES", furnish name and address of employer under "Remarks". If termination resulted from a reduction in force, so indicate and furnish details under "Remarks". If you since have been granted a clearance by the Government, indicate under Item 21, "Remarks" the date, level of clearance and where employed.) ☐ YES ☒ NO

8 LIST CHILDREN, BROTHERS, SISTERS, (if deceased, also) AND FORMER SPOUSE(S)

RELATION	NAME IN FULL	ADDRESS (Enter "deceased" if no longer living)	PLACE AND DATE OF BIRTH	PRESENT CITIZENSHIP

9 LIST OTHER LIVING RELATIVES AND RELATIVES OF SPOUSE WHO ARE NOT UNITED STATES CITIZENS

10 FOREIGN COUNTRIES VISITED OR RESIDED IN

CITY AND COUNTRY	DATE LEFT U.S.	DATE RETURNED U.S.	PURPOSE AND TYPE OF VISA
Paris-France-London, England	12/71	1/72	Visit-Tourist
Tehran, Iran	6/71	3/79	During this period of employment by Bell I traveled intermittently between Iran and the United States on company business.

19. LIST EACH FOREIGN GOVERNMENT, FIRM, CORPORATION OR PERSON FOR WHOM YOU ACT OR HAVE ACTED AS A REPRESENTATIVE, OFFICIAL OR EMPLOYEE IN THE PAST 5 YEARS. LIST ALL COMMUNIST GOVERNMENTS, FIRMS OR CORPORATIONS FOR WHOM YOU HAVE EVER ACTED IN SUCH CAPACITY. ATTACH A STATEMENT, AS REQUIRED BY PARAGRAPH 38K, FPM, FULLY DESCRIBING EACH AFFILIATION. *(If none, so indicate.)*

None

20. REFERENCES *(Give five personal references, giving business address of all references, if known. Do not include relatives, former employers, or persons living outside the United States.)*

NAME	YEARS KNOWN	STREET AND NUMBER	CITY	STATE

21. REMARKS *(If additional space is needed, continue on plain paper.)*

FURTHER INSTRUCTIONS: DO NOT COMPLETE PARTS III OR IV AT THIS TIME. Return this partially completed form to your employer who will review it to assure all entries are complete and the form is properly filled in. After review, proceed with completion of Parts III and IV.

PART III

Complete the items below in private. The answers or statements in this part are privileged information between you and the Government. You should enter in item 38 any information relating to your answers which might require further explanation, or any additional information which may have a bearing on your security clearance.

32 HAVE YOU EVER BEEN ARRESTED, CHARGED OR HELD BY ANY LAW ENFORCEMENT AUTHORITIES FOR ANY VIOLATION OF ANY LAW, REGULATION OR ORDINANCE? INCLUDE ALL COURT-MARTIAL. DO NOT INCLUDE ANYTHING THAT HAPPENED BEFORE YOUR 16TH BIRTHDAY. DO NOT INCLUDE TRAFFIC VIOLATIONS FOR WHICH THE ONLY PENALTY IMPOSED WAS A FINE OF $25.00 OR LESS. ALL OTHER CHARGES MUST BE INCLUDED EVEN IF THEY WERE DISMISSED.

☑ YES ☐ NO IF "YES" GIVE DATE AND PLACE, CHARGE, AND DISPOSITION

unpaid parking tickets
Alhambra, California - 1972
fined $105.00

33 WHAT TYPE OF DISCHARGE DID YOU RECEIVE, IF ANY, FROM MILITARY SERVICE?
N/A

34 HAVE YOU EVER HAD A SECURITY CLEARANCE SUSPENDED, DENIED, OR REVOKED? (If answer is "YES", indicate level of clearance, when suspended, denied or revoked, by whom and where employed under Item 28, "Remarks". If you since have been granted a clearance by the government, so indicate under Item 34, "Remarks", the date, level of clearance and agency which restored the clearance.)
☐ YES ☑ NO

35

		YES	NO
a	DO YOU HAVE A HISTORY OF MENTAL OR NERVOUS DISORDERS?		✓
b	ARE YOU NOW OR HAVE YOU EVER BEEN ADDICTED TO THE USE OF HABIT FORMING DRUGS SUCH AS NARCOTICS OR BARBITURATES?		✓
c	ARE YOU NOW OR HAVE YOU EVER BEEN A CHRONIC USER TO EXCESS OF ALCOHOLIC BEVERAGES?		✓

(If answer to any of the above is "YES", explain. Give names and addresses of hospitals, clinics, sanatoriums, and physicians who have examined or treated you for each condition.)

36 AUTHORITY TO RELEASE MEDICAL INFORMATION

I HEREBY GRANT PERMISSION TO THE DEPARTMENT OF DEFENSE TO OBTAIN AND REVIEW COPIES OF MY MEDICAL AND INSTITUTIONAL RECORDS RELATING TO CONDITIONS LISTED IN ITEM 35 AND TO QUESTION THOSE WHO HAVE EXAMINED OR TREATED ME THEREFOR

SIGNATURE OF EMPLOYEE: Ismail Yasmani DATE: 7/6/79

37 ORGANIZATIONAL MEMBERSHIP

		YES	NO
a	ARE YOU NOW, OR HAVE YOU EVER BEEN A MEMBER OF THE COMMUNIST PARTY, U.S.A., THE COMMUNIST POLITICAL ASSOCIATION, THE YOUNG COMMUNIST LEAGUE, OR ANY COMMUNIST ORGANIZATION?		✓
b	ARE YOU NOW OR HAVE YOU EVER BEEN A MEMBER OF ANY FOREIGN OR DOMESTIC ORGANIZATION, ASSOCIATION, MOVEMENT, GROUP OR COMBINATION OF PERSONS WHICH IS TOTALITARIAN, FASCIST, COMMUNIST OR SUBVERSIVE, OR WHICH HAS ADOPTED, OR SHOWS A POLICY OF ADVOCATING OR APPROVING THE COMMISSION OF ACTS OF FORCE OR VIOLENCE TO DENY OTHER PERSONS THEIR RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES, OR WHICH SEEKS TO ALTER THE FORM OF GOVERNMENT OF THE UNITED STATES BY UNCONSTITUTIONAL MEANS?		✓

IF YOUR ANSWER TO EITHER OF THE ABOVE QUESTIONS IS "YES", LIST IN ITEM 38, THE NAMES OF ALL SUCH ORGANIZATIONS, ASSOCIATIONS, MOVEMENTS, GROUPS OR COMBINATION OF PERSONS, AND DATES OF MEMBERSHIP. GIVE COMPLETE DETAILS OF YOUR ACTIVITIES THEREIN AND MAKE ANY EXPLANATION YOU DESIRE REGARDING YOUR MEMBERSHIP OR ACTIVITIES

38 REMARKS (Use the space provided below and attach additional sheets, if necessary.)

PART IV

IMPORTANT NOTICE. Your signature on the following certification must be witnessed; the witness may be an employee of your firm. Prior to affixing your signature to the form, remove all carbons, fold the form so that the witness to your signature will not see any portion of Part III of the completed Personnel Security Questionnaire. Sign and date the form in the presence of the witness. Have the witness affix his signature and his address to the appropriate blocks on the form.

NOTE. PENALTY FOR MISREPRESENTATION - *Failure to answer all questions, or any misrepresentation (by omission or concealment, or by misleading, false, or partial answers) may serve as a basis for denial of clearance for access to classified Department of Defense information. In addition, Title 18, United States Code 1001, makes it a criminal offense, punishable by a maximum of 5 years imprisonment, $10,000 fine, or both, knowingly and willfully to make a false statement or representation to any Department or Agency of the United States as to any matter within the jurisdiction of any Department or Agency of the United States.*

This includes any statement knowingly and willfully made by employer or employee herein which is knowingly incorrect, incomplete or misleading in any important particular - Title 18 United States Code 911 states "whoever falsely and willfully represents himself to be a citizen of the United States shall be fined not more than $1,000 or imprisoned not more than three years, or both".

CERTIFICATION

WARNING. Read every sentence of the Certification before signing. I certify that my above answers are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I certify that I know that any misrepresentation or false statement made by me herein may subject me to prosecution under Section 1001 of the United States Criminal Code, with penalties up to five (5) years imprisonment and $10,000 fines, and provide a basis for denial of security clearance. I certify that I have read and understand each sentence of this Certification.

SIGNATURE OF WITNESS	SIGNATURE OF EMPLOYEE	DATE OF SIGNATURE
[signature]	[signature]	7/6/79
ESS OF WITNESS (City, County, State) 830 KINGSBURY A, CALIF 91704		

INSTRUCTIONS TO EMPLOYEE UPON COMPLETION OF ABOVE

ow that the form is signed and witnessed, place it in the pre-addressed envelope furnished, (DSA Form 703), together with he completed FD Form 258 (Fingerprint Card), seal the envelope, sign across the envelope flap on the line provided, and 'fix the date of signature. Deliver the sealed envelope to your employer immediately.

DEPARTMENT OF DEFENSE
PERSONNEL SECURITY QUESTIONNAIRE (INDUSTRIAL) (Multiple Purpose)

FORM APPROVED OMB NO 22-R003

DATE: August 1, 1979

DD FORM 1 FEB 74 49 — PART I

1. LAST NAME - FIRST NAME - MIDDLE NAME: Yermian Esmail NMN

SEX: Male

2. ALIASES(S) AND ALL FORMER NAME(S): Don (Nickname)

4. SOCIAL SECURITY NUMBER:

5. MONTH, DAY, YEAR OF BIRTH:

6. PLACE OF BIRTH:

7. SERVICE NUMBER:

8. RELATIVES	DATE AND PLACE OF BIRTH	PRESENT ADDRESS	CITIZENSHIP
a. FATHER			
b. MOTHER (Full Maiden Name)			
c. SPOUSE (Full Maiden Name)			

9. RESIDENCES (List all from 18th birthday or during past 15 years, whichever is shorter. If under 18, list present and most recent addresses.)

a. FROM	b. TO	c. NUMBER AND STREET	d. CITY	e. STATE

10. EMPLOYMENT (List all from 18th birthday or during past 15 years, whichever is shorter. If under 18, list present and most recent employment)

a. FROM	b. TO	c. EMPLOYER	d. PLACE
3/79	Present	Gulton Industries, Inc.	1?41 Cerise Ave.-Hawthorne, Calif.
2/75	3/79	Bell Helicopter Int'l.	Iran-Houston, Texas
3/73	2/75	Century Industrial	Los Angeles, Ca.
6/71	3/73	☐ D (Square D)	Los Angeles, Ca.
6/67	6/71	Student/California State	University-Los Angeles, Ca.

11. LAST CIVILIAN SCHOOL

a. FROM	b. TO	c. NAME	d. PLACE
9/73	2/75	University of Southern	Calif.-Los Angeles, Ca.

PART II (TO BE COMPLETED BY EMPLOYER) 06509 Comm

TO:
Defense Industrial Security Clearance Office
Defense Supply Agency
Box 2499
Columbus, Ohio 43216

NAME AND ADDRESS OF EMPLOYER (If a subsidiary, include name of parent company)
Gulton Industries, Inc.
Engineered Magnetics Division
13041 Cerise Ave.-Hawthorne, Ca. 90250

JOB TITLE AND DESCRIPTION OF EMPLOYEE'S DUTIES WHICH REQUIRE ACCESS TO CLASSIFIED INFORMATION
Sr Engineer - Need-to-know based on requiring access to classified material in order to perform job duties.

CONTRACT NUMBER, WHEN APPLICABLE: N/A

SECURITY CLASSIFICATION OF MATERIALS OR INFORMATION EMPLOYEE WILL HAVE ACCESS TO: SECRET

IF SUBJECT IS AN IMMIGRANT ALIEN, HAS HE PRESENTED ALIEN REGISTRATION RECEIPT CARD (Form I-151)? ☒ YES ☐ NO — 79298 0375

I CERTIFY THAT THE ENTRIES MADE BY ME ABOVE ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND ARE MADE IN GOOD FAITH.

SIGNATURE OF EMPLOYER OR DESIGNATED REPRESENTATIVE: Ruby J. Lane

Plaintiff's Exhibit No. 3
Page 1 of 5

12 EDUCATION (Account for all civilian schools and military academies)

YEARS (Month if known) FROM	TO	NAME AND LOCATION OF SCHOOL	GRADUATE YES	GRADUATE NO	DEGREE
9/73	2/75	University of So. Calif.-Los Angeles, Ca.	x		MBA
6/67	6/71	California State Univer.-Los Angeles, Ca.	X		BS

LIST ALL ORGANIZATIONS EXCEPT LABOR UNIONS AND EXCEPT ORGANIZATIONS REFERRED TO IN ITEM 27 BELOW IN WHICH YOU HOLD OR HAVE HELD MEMBERSHIP. IF NONE, SO STATE.

NAME AND ADDRESS	TYPE	OFFICE HELD	FROM (Date)	TO (Date)

13 MILITARY SERVICE

a. COUNTRY	BRANCH OF SERVICE	SERVICE NUMBER	FROM (Date)	TO (Date)

ARE YOU A MEMBER OF A RESERVE COMPONENT? ☐ YES ☒ NO (If answer is "YES", furnish service, component and current status under Item 21, "Remarks".)

c. LOCAL DRAFT BOARD (United States) AND ADDRESS	d. SELECTIVE SERVICE NO.	e. CLASSIFICATION

PREVIOUS CLEARANCE

HAVE YOU EVER BEEN PREVIOUSLY GRANTED A SECURITY CLEARANCE? (If answer is "YES", indicate level of clearance, when granted, by whom and where employed at that time under Item 21, "Remarks".) ☐ YES ☒ NO

HAVE YOU EVER TERMINATED EMPLOYMENT WITH THE U.S. GOVERNMENT . . . SECURITY CLEARANCE WAS PENDING? (If answer is "YES", furnish and furnish details under "Re the date, level of clearance a ... ted from a reduction in force, so indicate ni, indicate under Item 21, "Remarks" ☐ YES ☐ NO

OTHER RELATIVES

a. LIST CHILDREN, BROTHERS, SISTERS (16 years and older) AND FORMER SPOUSE(S).

RELATION	NAME IN FULL	ADDRESS (Enter "deceased" if no longer living)	PLACE AND DATE OF BIRTH	PRESENT CITIZENSHIP

b. LIST OTHER LIVING RELATIVES AND RELATIVES OF SPOUSE WHO ARE NOT UNITED STATES CITIZENS.

18. FOREIGN COUNTRIES VISITED OR RESIDED IN

CITY AND COUNTRY	DATE LEFT U.S.	DATE RETURNED U. S.	PURPOSE AND TYPE OF VISA
Paris, France-London, England	6/71	8/71	Visit-Tourist
Tehran, Iran	6/71	3/79	During this period of employment by Bell I traveled intermittently between Iran and the U.S. on company business.

19. LIST EACH FOREIGN GOVERNMENT, FIRM, CORPORATION OR PERSON FOR WHOM YOU ACT OR HAVE ACTED AS A REPRESENTATIVE, OFFICIAL OR EMPLOYEE IN THE PAST 5 YEARS. LIST ALL COMMUNIST GOVERNMENTS, FIRMS OR CORPORATIONS FOR WHOM YOU HAVE EVER ACTED IN SUCH CAPACITY. ATTACH A STATEMENT, AS REQUIRED BY PARAGRAPH 20b, 18M, FULLY DESCRIBING EACH AFFILIATION. (If none, so indicate.)

None

20. REFERENCES (Give five personal references, stating business address of all references, if known. Do not include relatives, former employers, or persons living outside the United States.)

NAME	YEARS KNOWN	STREET AND NUMBER	CITY	STATE

21. REMARKS (If additional space is needed, continue on plain paper.)

#10. Employment

FURTHER INSTRUCTIONS: DO NOT COMPLETE PARTS III OR IV AT THIS TIME. Return this partially completed form to your employer who will review it to assure all entries are complete and the form is properly filled in. After return, proceed with completion of Parts III and IV.

PART III

Complete the items below in private. The answers or statements in this Part are privileged information between you and the Government. You should enter in Item 28 any information relating to your answers which might require further explanation, or any additional information which may have a bearing on your security clearance.

22. HAVE YOU EVER BEEN ARRESTED, CHARGED, OR HELD BY ANY LAW ENFORCEMENT AUTHORITIES FOR ANY VIOLATION OF ANY LAW, REGULATION OR ORDINANCE? INCLUDE ALL COURTS-MARTIAL. DO NOT INCLUDE ANYTHING THAT HAPPENED BEFORE YOUR 16TH BIRTHDAY. DO NOT INCLUDE TRAFFIC VIOLATIONS FOR WHICH THE ONLY PENALTY IMPOSED WAS A FINE OF $25.00 OR LESS. ALL OTHER CHARGES MUST BE INCLUDED EVEN IF THEY WERE DISMISSED.

☐ YES ☐ NO IF "YES", GIVE DATE AND PLACE, CHARGE, AND DISPOSITION:

UNPAID TRAFFIC/PARKING TICKETS
FINED $105
ALHAMBRA, CALIFORNIA - 1972

23. WHAT TYPE OF DISCHARGE DID YOU RECEIVE, IF ANY, FROM MILITARY SERVICE?

N/A

24. HAVE YOU EVER HAD A SECURITY CLEARANCE SUSPENDED, DENIED, OR REVOKED? *(If answer is "YES", indicate level of clearance, when suspended, denied or revoked, by whom and where employed under Item 28, "Remarks". If you since have been granted a clearance by the government, indicate under Item 28, "Remarks", the date, level of clearance and activity which restored the clearance.)*

☐ YES ☑ NO

25	YES	NO
a. DO YOU HAVE A HISTORY OF MENTAL OR NERVOUS DISORDERS?		✓
b. ARE YOU NOW OR HAVE YOU EVER BEEN ADDICTED TO THE USE OF HABIT FORMING DRUGS SUCH AS NARCOTICS OR BARBITURATES?		✓
c. ARE YOU NOW OR HAVE YOU EVER BEEN A CHRONIC USER TO EXCESS OF ALCOHOLIC BEVERAGES?		✓

(If answer to any of the above is "YES", explain. Give names and addresses of hospitals, clinics, sanitoriums, and physicians who have examined or treated you for such conditions.)

26. AUTHORITY TO RELEASE MEDICAL INFORMATION

I HEREBY GRANT PERMISSION TO THE DEPARTMENT OF DEFENSE TO OBTAIN AND REVIEW COPIES OF MY MEDICAL AND INSTITUTIONAL RECORDS RELATING TO CONDITIONS LISTED IN ITEM 25 AND TO QUESTION THOSE WHO HAVE EXAMINED OR TREATED ME THEREFOR

SIGNATURE OF EMPLOYEE: E Germaine. DATE:

27. ORGANIZATIONAL MEMBERSHIP	YES	NO
a. ARE YOU NOW OR HAVE YOU EVER BEEN A MEMBER OF THE COMMUNIST PARTY U.S.A., THE COMMUNIST POLITICAL ASSOCIATION, THE YOUNG COMMUNIST LEAGUE, OR ANY COMMUNIST ORGANIZATION?		✓
b. ARE YOU NOW OR HAVE YOU EVER BEEN A MEMBER OF ANY FOREIGN OR DOMESTIC ORGANIZATION, ASSOCIATION, MOVEMENT, GROUP, OR COMBINATION OF PERSONS WHICH IS TOTALITARIAN, FASCIST, COMMUNISTIC, OR SUBVERSIVE, OR WHICH HAS ADOPTED, OR SHOWS A POLICY OF ADVOCATING OR APPROVING THE COMMISSION OF ACTS OF FORCE OR VIOLENCE TO DENY OTHER PERSONS THEIR RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES OR WHICH SEEKS TO ALTER THE FORM OF GOVERNMENT OF THE UNITED STATES BY UNCONSTITUTIONAL MEANS?		✓

IF YOUR ANSWER TO EITHER OF THE ABOVE QUESTIONS IS "YES", LIST IN ITEM 28 THE NAMES OF ALL SUCH ORGANIZATIONS, ASSOCIATIONS, MOVEMENTS, GROUPS OR COMBINATION OF PERSONS AND DATES OF MEMBERSHIP. GIVE COMPLETE DETAILS OF YOUR ACTIVITIES THEREIN AND MAKE ANY EXPLANATION YOU DESIRE REGARDING YOUR MEMBERSHIP OR ACTIVITIES

28. REMARKS *(Use the space provided below and attach additional sheets, if necessary.)*

(COMPLETE PART IV ON REVERSE SIDE OF ORIGINAL COPY)

PART IV

IMPORTANT NOTICE: Your signature on the following certification must be witnessed, the witness may be an employee of your firm. Prior to affixing your signature to the form, remove all carbons, fold the form so that the witness to your signature will not see any portion of Part III of the completed Personnel Security Questionnaire. Sign and date the form in the presence of the witness. Have the witness affix his signature and his address to the appropriate blocks on the form.

NOTE: PENALTY FOR MISREPRESENTATION - Failure to answer all questions, or any misrepresentation (by omission or concealment, or by misleading, false, or partial answers) may serve as a basis for denial of clearance for access to classified Department of Defense information. In addition, Title 18, United States Code 1001, makes it a criminal offense, punishable by a maximum of 5 years imprisonment, $10,000 fine, or both, knowingly and willfully to make a false statement or representation to any Department or Agency of the United States as to any matter within the jurisdiction of any Department or Agency of the United States.

This includes any statement knowingly and willfully made by employer or employee herein which is knowingly incorrect, incomplete or misleading in any important particular - Title 18 United States Code 911 states "whoever falsely and willfully represents himself to be a citizen of the United States shall be fined not more than $1,000 or imprisoned not more than three years, or both".

CERTIFICATION

WARNING: Read every sentence of the Certification before signing. I certify that my above answers are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I certify that I know that any misrepresentation or false statement made by me herein may subject me to prosecution under Section 1001 of the United States Criminal Code, with penalties up to five (5) years imprisonment and $10,000 fine, and provide a basis for denial of security clearance. I certify that I have read and understand each sentence of this Certification.

SIGNATURE OF WITNESS	SIGNATURE OF EMPLOYEE	DATE OF SIGNATURE
Ruby J. Lange	E Alexander	8/24/79
ADDRESS OF WITNESS (City, County, State) Los Angeles, L.A. Ca.		

INSTRUCTIONS TO EMPLOYEE UPON COMPLETION OF ABOVE

Now that the form is signed and witnessed, place it in the pre-addressed envelope furnished, (DSA Form 703), together with the completed FD Form 258 (Fingerprint Card), seal the envelope, sign across the envelope flap on the line provided, and affix the date of signature. Deliver the sealed envelope to your employer immediately.

Instructions for Completion of
DD Form 48 or DD Form 49

You must follow these instructions carefully to insure rapid processing of *your* security clearance. Failure to do so will delay your clearance.

A worksheet is available from your employer to assist in preparing a draft of the entries that will be inserted in Part I of the DD Form 48 or DD Form 49. These instructions pertain to the worksheet as well as the final form.

Parts I and II of the final form should be completed prior to your completion of Parts III and IV. If they are not, return the form to your employer before proceeding to Part III.

Instructions that follow correspond to the identically numbered entry on the form. For example, instruction number 1, Name, explains how to complete entry number one on the form.

1. Name. Give your full name to include last, first, and middle name in that order. Names should agree with military or civilian employment records; if not, explain in nonprivileged "Remarks" item (#21 on DD Form 48 or 49) or on a separate sheet. If no middle name, or initial, use "(NMI)." If initial only, insert the appropriate initial followed by "(IO)." If you are an immigrant alien or a naturalized U.S. citizen born in an Oriental or Arabic country, write your name in English and add the equivalent Japanese, Chinese, or Korean characters (ideographs) or the Arabic script, as appropriate.

2. Sex. Self-explanatory.

3. Alias(es) or other name(s) by which known. List all other names by which known to include nicknames, aliases, and name changes. This means all names under which you have been known to employers, associates, or others. If known by middle name or initials only, so indicate. Nicknames derived from given or surnames should not be listed, e.g., "Joe" if your name is "Joseph," "Smitty" if your name is Smith. If known by any last name other than listed in item 1, so indicate. Married females should list maiden names, e.g., Mary Ann Jones and names acquired through

marriage, e.g., Mary Ann Smith, Mary Jones Smith, Mrs. Robert L. Smith. When listing "alias," "Former legal name," "nicknames," "maiden name," designate which of these it is. If none of the above apply to you, insert the word "None."

4. Social Security Number. Insert complete Social Security Number. DO NOT INVERT NUMBERS. Copy *exactly* as on your Social Security Card.

5. Date of Birth. Spell out or abbreviate birthdate, e.g. 2 June 1924. Do not reflect birthdate as 2-6-24.

6. Place of Birth. If American born, indicate city, county, and State. If foreign born, indicate town, village, city, or appropriate political subdivision and country. List in both English and the language of the country concerned. If known, indicate place birth certificate is recorded in "Remarks" item.

7. Service Number. Insert complete military service number. DO NOT INVERT NUMBERS.

8. Relatives. Give complete information on spouse and parents. Insert maiden name for wife and mother in space provided. If wife and/or mother were previously married, provide the name acquired by previous marriage in item 21, "Remarks." Give complete information concerning date and place of birth as required. Addresses must include street and number, city, county (if born in the U.S.) and State. If born in another country than the U.S., include street and number, city and country. If Germany indicate whether East or West.[1]

9. Residence. List all places of residence (not employment) during the last 15 years in chronological order to include instructions required to locate the rural or RFD residence. Instructions should be so complete that a stranger could find the location. Use specific directions as required. For example: Rural Route No. 4, South side of Turner Road, proceed 1½ miles West on U.S. 191, 3 miles South of Memphis, Tennessee. If space is insufficient, use an additional sheet. Schematic or freehand drawings may be help-

[1] East Germany is German Democratic Republic (GDR) (including the Soviet Sector of Berlin). West Germany is Federal Republic of Germany (including the non-Soviet Sectors of Berlin.)

ful. Addresses while in the military service, not permanent addresses, must be shown. If the residence was located on a military installation, indicate the complete onbase residence, to include unit and station. If residence was offbase, indicate the complete address (i.e., street and number, city, and State). When any metropolitan address is given (New York, Chicago, Los Angeles, etc.), the borough or subdivision in which located must be shown. If residence was in a foreign country, see instruction 18.

CAUTION: Military addresses must be shown.

CAUTION: Your forms will be rejected if you fail to show month and year of each residence and periods of time unaccounted for on the PSQ. If unknown, so indicate.

(While advancing with the Armies in combat, addresses are not required.)

10. Employment. List all periods of Government employment and each period of employment during the 15-year period immediately preceding the date of accomplishment of the form or from the date of your eighteenth (18th) birthday, whichever is the shorter period. Include complete names, street, street numbers, city and State. Include employment, parttime, and school vacations employment, self-employment and unemployment, to include position held (e.g., clerk, accountant, laborer, electrician, etc.). The month and year of beginning and ending of each period must be shown. Foreign names and addresses should be in English and the foreign language concerned; if Asiatic, the ideographs (characters) will be shown. Do not list military service or education under this item. List all employment in chronological order, beginning with your present employment. For a director of a company who is also employed on a full or part-time basis by one or more other companies, his employment as a director of the company submitting his clearance application should appear at the beginning of the list. (Note: For purposes of Industrial Security, a director shall always be considered as an employee of the company.) If self-employed, or unemployed during any period, list in "Remarks" or on separate sheet, the complete names and addresses of individuals who can verify periods of self-employment and/or unemployment, and the complete name

and address of the business if you were self-employed. Fully explain reason for period(s) of unemployment in excess of four months. If any employment was in a large metropolitan city (e.g., New York, Chicago, Los Angeles, etc.), indicate the borough or subdivision. If employed by a large manufacturing concern such as Chrysler Corp. or General Motors Corp., give the name of the specific plant or division and its address.

CAUTION: Failure to account for periods of unemployment or self-employment will delay processing of your clearance. Be sure to give name and address of person or persons who could verify period or periods of unemployment or self-employment. If you have been unemployed indicate reason, i.e., lay-off, school, pregnant, etc. If you were unemployed as a result of hospitalization or medical care indicate the reason for such hospitalization or medical care; i.e., surgery, tuberculosis (TB), nervous breakdown, broken limb, etc.

11. Last Civilian School. List last civilian school attended. See instruction 12 for additional guidance.

12. Education. List all other schools attended. Do not list service schools attended while a member of the U.S. Armed Forces. Grammar schools will be listed only if the grammar school was the last school attended. Indicate whether graduated from each school and college and indicate college degree(s) received, if any. Location of school must be shown; if located in a large metropolitan city (e.g., New York, Chicago, Los Angeles, etc.), borough or subdivision will be shown. Relate college years and place of residence with residences listed elsewhere. Names of schools and colleges attended in foreign countries must be shown in English and the language of the foreign country concerned. The specific school or college of all universities attended must be shown.

CAUTION: Be certain to show both month and year of attendances.

13. Citizenship. Citizenship status as reflected in this item(s) must be complete i.e., each block must be completed or annotated "N/A" as appropriate. If you are a naturalized citizen, list certificate number, date, and place of

naturalization court. If your citizenship is derived, list the certificate number(s) of your parents. Also in item 21, "Remarks" indicate the court of issuance, location, date and certificate number of parents' citizenship. If an alien, list your alien registration number, citizen of what country, date and place of entry into the United States, date petition of naturalization filed, date and court of issuance, and petition number. If you are stateless, so indicate in "Remarks" item or on separate sheet. If your naturalization application is pending, explain the circumstances in "Remarks" column or on separate sheet. For personnel born abroad of U.S. parents, enter date and port of initial entry into the United States, if known. If the information required above is not readily available, it must be obtained from parents or other sources in possession of such information.

CAUTION: This item *must* be properly completed in order to process your clearance.

14. Organizational Membership. Give pertinent information, including names and locations, of each organization of WHICH YOU ARE OR HAVE BEEN A MEMBER, and indicate any office held. National Guard and Reserve organizations (if not reflected elsewhere) must be listed. Show name and address of national organizations from which derived or with which affiliated. If this item does not apply enter "None."

CAUTION: Failure to properly complete this item will delay processing. Don't forget church organizations, Scouting organizations and similar organizations. If "*none*", it *must* be indicated as such.

15. Military Service. Complete all blocks, including item 7 on DD Form 48 and 49. Indicate the beginning and ending dates of each tour of extended active duty, even though separated to reenlist or to accept a commission. For each tour of active duty, indicate serial number in appropriate block, item 15. Indicate in item 7 serial number of last tour of duty. Indicate any current Reserve or National Guard affiliation, show current status, assignment, unit designation and location. Indicate local draft board and address, order number and classification, if applicable. If you have

registered and do not know the specific address give approximate location.

CAUTION: Be sure to provide service component and current status where required. Your form must reflect local draft board information. Failure to furnish draft classification if you are of draft age and have not completed your military obligations, or if you are not over 32 years of age, will cause rejection of your application.

16. Previous Clearance. Indicate by checking the appropriate block whether you have previously been granted access to classified information by any U.S. Government agency. For all personnel who indicate a personnel security clearance has ever been suspended, revoked, or denied by a Government agency, indicate the level of access to classified information at the time, full name and address of employer, and position held.

CAUTION: Failure to indicate in the "Remarks" section, level of access to classified information, full name and address of employer, and position held, would be cause for rejection.

17.a. Other Relatives. List full names of children, brothers, sisters and former spouse(s), preceded by appropriate identification, e.g., brother, sister, former spouse, etc. For married relatives, give both maiden and married name in full (e.g., Alice Mary Jones, nee Smith, also known as (AKA) Mrs. James Robert Jones). When listing former spouse(s), if deceased, so indicate. If divorced, list date and place where granted for each divorce. Give complete information concerning date and place of birth for each relative listed, as required. Complete addresses as required, to include street and number, city, county and State (if born in the United States). If born in another country than the U.S., include street and number, city and country.

b. Other Living Relatives, and Relatives of Spouse who are not United States citizens. All information regarding each relative required by the respective item of the DD Form involved must be furnished with complete identifying data. For other living relatives and relatives of spouse, include all relatives of both applicant and spouse (e.g., blood relatives and in-laws, foster parents, guardian,

stepchildren, adopted children, step-brothers and sisters, etc.). Give the current name of the country in which the place where the relative presently resides is located. If Germany indicate whether East or West.[1] In the case of foreign names and addresses, add the equivalent, Japanese, Chinese, or Korean characters (ideographs) or the Arabic script, as appropriate. When relatives or relatives of spouse reside in any of the following countries, the method (mail, personal visits, etc.), regularity and recency of contact, if any, with such relatives must be shown in the "Remarks" item (item 21 on DD Form 48 and 49), or on a separate sheet: Albania, Bulgaria, Chinese Peoples Republic (Communist China including Tibet), Cuba, Czechoslovakia, Democratic Peoples Republic of Korea (North Korea), Democratic Republic of Vietnam (North Vietnam), German Democratic Republic (GDR-East Germany, including the Soviet Sector of Berlin), Hungary, Kurile Islands, and South Sakhalin (Karafuto), Mongolian Peoples Republic (Outer Mongolia), Poland, Rumania, Union of Soviet Socialist Republics (U.S.S.R.), including Estonia, Latvia, Lithuania, and all other constituent republics and Yugoslavia.

18. Foreign Countries Visited or Resided In. List all periods of foreign travel or residence other than on behalf of the U.S. Government. This will include the duration of the visit (by month and year), the countries visited, the complete address where you resided in a foreign country and the purpose (business, vacation, etc.) of travel in each country. For foreign residence, indicate address in the foreign country concerned in sufficient detail to establish a positive location and give the current name of the country in which the place where you formerly resided or visited is located. If the country is Germany, indicate whether East or West Germany. If an individual makes frequent trips to Canada or to Mexico and cannot recall specific dates and places of travel, the following statement will be accepted by DISCO: "I reside in the United States—Canadian/Mexican border

[1] East Germany is German Democratic Republic (GDR) (including the Soviet Sector of Berlin). West Germany is Federal Republic of Germany (including the non-Soviet Sectors of Berlin.)

and make frequent visits to Canada or to Mexico for (e.g., recreation, entertainment, etc. purposes). My last visit was to *(indicate city—Canada/Mexico)* on *(indicate date or approximate date).*"

CAUTION: Failure to complete this item as to country visited and purpose of trip when travel is indicated will delay processing. If frequent visits are made to Canada or to Mexico for vacation purposes and exact dates are not known, so indicate. Don't forget to include the time you spent in the foreign country, if foreign born.

19. Foreign Representative. List all foreign governments, corporations, or persons by which you are OR HAVE BEEN EMPLOYED, or for whom you act as a representative; include specific Government Agency or activity (e.g., department, branch, division, etc.), or complete name of business organization(s) or person(s) by which employed, and complete address, dates of employment, or representative status and duties or responsibilities. If none, so indicate.

20. References. All character references must be adult persons and, where possible, should be individuals with whom a close and continuing relationship exists or has existed for at least five (5) years. If available, list both references, home and business address, and phone number. If the address is a small town or a rural or star route, give complete instructions from the post office or nearest town. For example: Rural Route No. 4, South side of Turner Road, proceed 1½ miles West on U.S. 191, 3 miles South of Memphis, Tennessee. If space is insufficient show the additional information in "Remarks" or on attached sheet. Do *NOT* list military references unless grade, unit, and complete address are known. If any references are located in a large metropolitan city (e.g., New York, Chicago, Los Angeles, etc.) indicate the borough or subdivision.

21. Remarks. There are two items for "Remarks." They are to be used for continuation of other items where insufficient space was provided. The first "Remarks" item on DD Forms 48 and 49 (item 21) is to be used to expand upon answers or statements in the "non-privileged" portion of the form. The second "Remarks" item on DD Forms 48 and 49

(item 28) is to be used to expand upon answers or statements in the "privileged" portion of the form. If you need more space, attach additional sheets and indicate by stating "See attached sheets" at the end of the space. All attached sheets must be signed by you.

22. Arrests. Questions AT THE BEGINNING of this item must be reviewed carefully and either "Yes" or "No" checked. If "Yes," list all information, including disposition. Include information if you were detained, held, arrested, or summoned into court (in the United States or in a foreign country) even though it resulted in an acquittal or the charges were dropped or dismissed. Any action which resulted in the placement of your name on a police blotter or court record must be listed. List all courts-martial, including place, date, charges, and disposition. Use "Remarks" item or separate sheet to explain in detail the circumstances of all incidents listed.

CAUTION: Your forms will be rejected if you fail to answer the question either "yes" or "no," or if you fail to give complete date, place, charge, and disposition of each case. Do not refer to Penal Codes in charges. The specific charge must be spelled out.

23. Military Discharge. If previously in military service, indicate type of discharge received for each tour of active duty.

24. Security Clearance. For all personnel who indicate a personnel security clearance has ever been suspended, revoked, or denied by a Government agency indicate the level of access to classified information at the time, full name and address of employer, and position held.

25. Mental or Nervous Disorders. Narcotic or Barbituate Addiction; Chronic Use to Excess of Alcohol. Check *all* appropriate boxes. If the answer to any of these questions is "Yes," include a complete explanation. If treatment was received from Veterans Administration, show the VA case number and type of treatment.

26. Release. Self-explanatory.

27. Organizational Membership. Membership in Organizations Designated by Attorney General. Read carefully the list of organizations designated by the Attorney Gener-

al. Also read questions 27a and 27b carefully. If you are now, or have ever been a member of these organizations, enter a complete and detailed explanation in the space provided or on attached sheets, if necessary.

28. Remarks. This item is to be used to expand upon answers or statements in the "privileged" portion of the form. If you need more space, attach additional sheets and indicate by stating "See attached sheets" at the end of the space. All attached sheets must be signed by you.

29. Certification. The certification at the end of each Department of Defense form should be read carefully and understood thoroughly before the form is signed. The information you have provided must be accurate in every detail and you must understand the implications of certifying to false statements. The original of the form must be signed in ink by you in the presence of the witness. The original of all addendum sheets required to complete the form must be signed by you. The witness shall sign the original of the form, but he is not required to sign addendum sheets.

[List of organizations designated under Executive Order 10450 omitted]

COURT'S INSTRUCTION NO. ____
DEFENDANT'S PROPOSED INSTRUCTION NO. 9

An essential element of all three counts is that when the defendant made the statements charged in the Indictment he knowingly and willfully made those statements to the Department of Defense.

Unless you find, beyond a reasonable doubt, that defendant knew his statements were being made to the United States Department of Defense, you must acquit.

Based on attached Memorandum of Points and Authorities

COURT'S INSTRUCTION NO. ____

DEFENDANT'S PROPOSED INSTRUCTION NO. 10

A statement is "false" or "fictitious", if untrue when made, and then known to be untrue by the person making it or causing it to be made. A statement or representation is "fraudulent", if known to be untrue, and made or caused to be made with the intent to deceive the Government agency to whom submitted.

Devitt and Blackmar, *Federal Jury Practice and Instructions* (3rd Ed.), Section 28.04 "False", "Fictitious", "Fraudulent"—Defined

Supreme Court of the United States

No. 83-346

UNITED STATES, PETITIONER,

v.

ESMAIL YERMIAN

ORDER ALLOWING CERTIORARI. Filed November 28, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

COPY
Office-Supreme Court, U.S.
FILED
NOV 2 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-346

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

vs.

ESMAIL YERMIAN, RESPONDENT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent ESMAIL YERMIAN respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Ninth Circuit's opinion in this case. That opinion is reported at 708 F.2d 365.

I.

QUESTION PRESENTED

CAN A PERSON BE CONVICTED OF MAKING A FALSE STATEMENT TO THE UNITED STATES GOVERNMENT WITHOUT PROOF THAT HE KNEW HIS STATEMENT WAS BEING MADE TO THE UNITED STATES GOVERNMENT?

II.

STATEMENT OF THE CASE

Respondent ESMAIL YERMIAN was convicted on three counts of making a false statement in a matter within the jurisdiction of a federal agency in violation of 18 U.S.C. 1001, following a jury trial in the United States District Court for the Central District of California. He received a five year sentence with probation after the first six months. The Court of Appeals reversed his conviction.

The factual background of the case as presented by the government is not disputed, except where noted in the following discussion.

In April 1979, when respondent YERMIAN was newly employed as an engineer at Gulton Industries, a private firm, he was asked by Ruby Lane, security officer for Gulton Industries, to fill out a worksheet for preparation of a

personnel security questionnaire. After petitioner had filed out the worksheet, with the assistance of the instruction sheet and after Ms. Lane had added certain information based on conversations with petitioner, she typed a Personnel Security Questionnaire. Then YERMIAN completed the confidential section, Section 3, and returned it to Ms. Lane for mailing.

Sometime later, Ms. Lane typed up a Personnel Security Questionnaire using information he had previously supplied and brought it to YERMIAN for signature. He completed the confidential information and she observed him to place it in the pre-addressed envelope for mailing. Petitioner YERMIAN testified that he did not recall placing the form in any envelope.

In the information that petitionner had furnished to Gulton, he stated that he had worked for Square D Company from 1971 to 1973, and for Bell Helicopter in Houston from 1975 to 1979. He also listed no felony convictions. Through stipulation, testimony was received that Square D Company showed no employment records for the respondent for the period of June 1971 through March 1973, and that Bell Helicopter International showed no employment record for the period from February 1975 through March 1979. It was further stipulated that respondent YERMIAN was the same person referred to in the May 4, 1978 Judgment and Commitment Order Counts 1, 2, and 3 respectively were based on YERMIAN's false statements regarding his conviction and his employment by Bell and Square D in Exhibit 3.

The defense presented was that petitioner YERMIAN did not know that the false statements he was making were being made to a government agency. All three false statements

were first made on an application for employment with Gulton Industries. Respondent was at that time unemployed, felt desperate to get a job, and made the statements to enhance his chances for employment. When respondent was given the worksheet, he felt that he would be fired if he did not give the information he had previously given in his employment application. His understanding of the purpose of the worksheet was that the information was going to be used by Gulton for purposes of classifying employees. He did not know that the information would be sent to the Department of Defense, or to any other government agency, nor had he been told that by any person.

Respondent had not ever applied for a Department of Defense Security clearance before, nor was he familiar with procedures for getting a security clearance. He was simply told that the form was a personnel security questionnaire, and that he should fill it out. He had not known that he would have to obtain a security clearance as a condition of his work at Gulton.

When the typed version of the Security questionnaire brought to Respondent, he looked it over only very quickly. He did this both because he trusted that Ms. Lane had typed the information that he had given on the worksheet, and because he was being paged at that moment for a meeting with his supervisor. He did not read over any of the fine print in Part 4. At the time he signed this form, he still had no belief that the form would be submitted to the Department of Defense, and believed it was only for internal Gulton purposes.

At some time later, when Respondent YERMIAN was brought the typed security questionaire filed out Part 3, and again

signed it. He did not read it over carefully, because it contained essentially the same information as earlier forms he had filled out. At the time he signed this form, respondent YERMIAN did not know that the information would be sent to any agency of the United States Government.

YERMIAN first learned of the true purpose of this form when Ms. Lane told him that his security clearance had been denied. Sometine after that, he was contacted by agents of the Federal Bureau of Investigation. He truthfully discussed with them his previous employment and convictions. He was truthful with them, as he had not been in answering the forms, because he now knew he was talking to government agents rather than a private like Gulton.

At trial, the jury was erroneously given an instruction that YERMIAN should be convicted if they concluded that he knew or should have known that the information was to be submitted to a government agency, (emphasis added). Respondent objected to this instruction at the trial level as it did not satisfy the intent requirement of Section 1001.

The Court of Appeals reversed, construing Section 1001 to require proof beyond a reasonable doubt of actual knowledge of federal involvement.

III.

REASONS FOR DENYING THE WRIT

The Government argues that its petition should be granted because the Court of Appeals holding has created a direct conflict with three decisions of the Fifth, Sixth and Seventh Circuits, which, when presented with cases clearly distinguishable on their facts, held that Section 1001 does not require actual knowledge of federal involvement. See

United States v. Baker, 626 F.2d 512 (5th Cir. 1980); United States v. Lewis, 587 F.2d 854 (6th Cir. 1978)(per curiam); United States v. Stanford, 589 F.2d 285 (7th Cir. 1978), cert. denied, 440 U.S. 983 (1979).

In spite of the Government's contention, the decision by the Court of Appeals of the Ninth Circuit has not created a conflict with decisions rendered in other circuits. In United States v. YERMIAN, 708 F.2d 365 (9th Cir. 1983), the court was confronted with a problem distinctly different from the usual case as represented by Baker, Lewis and Stanford. Thus, what is allegedly a conflicting decision is actually distinguishable on its facts.

In YERMIAN, the respondent furnished false information in an application to a private company because he was unemployed and desperate to get a job. Later, he was asked to fill out a personnel security questionnaire which he assumed was for internal use only. In completing the questionnaire, he again provided the same false information so that all the documents he had completed for his employer would be consistent. YERMIAN was completely unaware that the company intended to send the security questionnaire to the federal government, but when they did so, under the interpretation of the district court, his conduct became criminal.

In Baker, Lewis and Stanford, the respective courts were faced with an entirely different problem. These cases represent the most typical type of prosecution under Section 1001. In each instance the specific aim of the defendant was to obtain funds from a federal source by fraudulent means. Thus, both the intent and the conduct in question was very different from that of respondent YERMIAN.

In United States v. Stanford, 589 F.2d 285, 297 (7th Cir.), cert. denied, 440 U.S. 983 (1979), the defendant wanted to get A.F.D.C. money even though employed and ineligible. She did this by applying for the federal money through the Illinois Department of Public Aid.

In United States v. Lewis, 587 F.2d 854 (6th Cir. 1978) (per curiam), the defendant against sought A.F.D.C. money though not entitled to it. She accomplished this by submitting false information to the Michigan Department of Social Services.

In Baker, Lewis, and Stanford, the Fifth, Sixth and Seventh Circuits found that knowledge of federal involvement was not required to sustain a conviction under Section 1001, because, as noted by the Court of Appeals for the Ninth Circuit, the cases "involved a direct attempt by a defendant to obtain funds from a federal source by fraudulent means." United States v. YERMIAN, 708 F.2d 365, 367 (9th Cir. 1983) Therefore, in those instances knowledge of federal involvement was conclusive. This necessitated a different application of Section 1001 than a case such as that of respondent YERMIAN who was not actively practicing monetary fraud upon the federal government.

Another frequently litigated type of Section 1001 case is one in which the defendant claims he is not liable under the statute because he did not make his false claim directly to the federal government and so his statement was not one

Third, Eight and Ninth Circuits, have found the defendants liable as did the Baker, Lewis, and Stanford courts. See United States v. Hooper, 596 F.2d 219 (7th Cir. 1979), United States v. Cella, 568 F.2d 1266 (9th Cir. 1978), United States v. Kraude, 467 F.2d 37 (9th Cir.), cert. denied 415 U.S. 977 (1974), United States v. Matanky, 482 F.2d 1319 (9th Cir.) cert. denied, 414 U.S. 1039 (1973), United States v Candella, 482 F.2d 1223 (2d Cir. 1973).

Thus, in cases where federal funds are sought from the United States Government in a manner making knowledge of the source conclusive, the various circuits including the Ninth Circuit have all applied the statute consistently without giving rise to any conflict.

In YERMIAN v. United States, 708 F.2d 365 (9th Cir. 1983), the Court of Appeals was dealing with a completely different problem. The defendant was not seeking funds the source of which made his knowledge of federal involvement nearly conclusive. Instead, the Court was asked to decide whether they thought it was appropriate to criminally punish under Section 1001, an individual who thought he was merely completing an internal Security questionnaire. The court found it inappropriate that his conduct should be transformed into criminal behavior because of the mere fortuity, that unbeknownst to him, his employers would forward the paperwork to the federal government.

YERMIAN does not present the usual factual setting which courts encounter in Section 1001 litigation. More

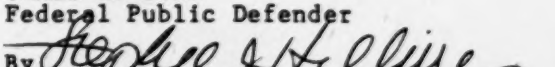
so until it meets with a more appropriate case.

IV.

CONCLUSION

In summary, the writ for the petition for certiorari should be denied because the allegedly conflicting decisions are distinguishable on their facts and because this is not the case in which to further construe the requirements of Section 1001.

JAMES R. DUNN
Federal Public Defender

DATED: October 31, 1983 By 
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No. 83-346

UNITED STATES OF AMERICA, PETITIONER

vs.

ESMAIL YERMIAN, RESPONDENT

MOTION FOR LEAVE TO PROCEED

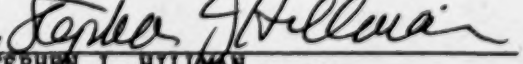
IN FORMA PAUPERIS

The respondent, ESMAIL YERMIAN, by his undersigned counsel, asks leave to file the attached Response In Opposition to A Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, without prepayment of costs and to proceed in forma pauperis. The Office of the Federal Public Defender was appointed as counsel for Mr. YERMIAN in the trial court under the Criminal Justice Act, 18 U.S.C. § 3006(A)(d).

This motion is brought pursuant to Rule 46.1 of the Rules of the Supreme Court of the United States.

JAMES R. DUNN
Federal Public Defender

DATED: October 31, 1983

By 
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

vs.

ESMAIL YERMIAN, RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 1983, a copy of Motion for Leave to Proceed in Forma Pauperis and Response In Opposition to A Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit were mailed postage prepaid, to the Solicitior General of the United States, Department of Justice, Washington, D. C. 20530, counsel for the respondent.

DATED: October 31, 1983

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

vs.

ESMAIL YERMIAN, RESPONDENT

CERTIFICATE OF MAILING

I, STEPHEN J. HILLMAN, a member of the Bar of this Court, hereby certify that to the best of my knowledge, the attached Response in Opposition to Petition for a Writ of Certiorari was deposited in a United States Post Office or mail box, with first class postage pre-paid and properly addressed to the Clerk of the Court on October 31, 1983, within the permitted time for filing this Petition.

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SUBSCRIBED AND SWORN to before me this 31st day of October, 1983.

Sally M. Maiorca

OFFICIAL SEAL
SALLY M. MAIORCA
NOTARY PUBLIC — CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires June 20, 1986

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

No. 83-346

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

ESMAIL YERMIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether, in a prosecution for making a false statement in violation of 18 U.S.C. 1001, the government must prove that the defendant knew that the statement was made "in [a] matter within the jurisdiction of [a] department or agency of the United States."

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In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-346

UNITED STATES OF AMERICA, PETITIONER

v.

ESMAIL YERMIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 708 F.2d 365.

JURISDICTION

The judgment of the court of appeals was entered on April 19, 1983. A timely petition for rehearing was denied on July 5, 1983 (Pet. App. 16a). The petition for a writ of certiorari was filed on August 31, 1983, and was granted on November 28, 1983 (J.A. 51). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 1001 provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

Following a jury trial in the United States District Court for the Central District of California, respondent was convicted on three counts of making a false statement in a matter within the jurisdiction of a federal agency, in violation of 18 U.S.C. 1001. He was sentenced to concurrent terms of five years' imprisonment on each count, the first six months to be served, and the balance suspended in favor of a term of five years' probation. The court of appeals reversed (Pet. App. 1a-15a).

1. The evidence at trial showed (see Pet. App. 2a) that in 1979 respondent was hired as an engineer by Gulton Industries, a defense contractor. It was necessary for respondent to obtain a Department of Defense security clearance, since he was to have access to classified material in the course of his employment. Gulton's security officer therefore asked respondent to fill out a "Department of Defense Work Sheet for Preparation of Personnel Security Questionnaire" (*ibid.*; J.A. 5-7)

In response to a question on the work sheet asking whether he had ever been charged with any violation of law, respondent failed to disclose that in 1978 he had been convicted of mail fraud, in violation of 18 U.S.C. 1341. In describing his employment history, respondent falsely stated that he had been employed by Bell Helicopter, International, of Houston, Texas, and Square D Corporation of Los Angeles, California (J.A. 6-7, 9-10, 13, 26-28). The Gulton security officer typed the information provided by respondent onto another document captioned "Department of Defense Personnel Security Questionnaire." Respondent reviewed that document for errors and signed a certification stating that his "answers [were] true, complete, and correct to the best of [his] knowledge and belief, and [were] made in good faith" and that he knew "that any misrepresentation or false statement * * * may subject [him] to prosecution under Section 1001 of the United States Criminal Code * * *" (J.A. 38). The form respondent signed bore the following warning directly above the signature block (J.A. 7-9, 38):

> NOTE: PENALTY FOR MISREPRESENTATION—Failure to answer all questions, or any misrepresentation (by omission or concealment, or by misleading, false, or partial answer) may serve as a basis for denial of clearance for access to classified Department of Defense information. In addition, Title 18, United States Code 1001, makes it a criminal offense, punishable by a maximum of 5 years imprisonment, $10,000 fine, or both, knowingly and willfully to make a false statement or representation to any Department or Agency of the United States as to any matter within the jurisdiction of any Department or Agency of the United States.

> This includes any statement knowingly and willfully made by employer or employee herein which is knowingly incorrect, incomplete or misleading in any important particular * * *.

After witnessing respondent's signature, the Gulton security officer mailed the completed form to the Defense Industrial Security Clearance Office for processing (J.A. 8-9). Government investigators subsequently discovered that the information respondent had furnished was false, and he was denied a security clearance. When told of the discovery, respondent acknowledged that the information he had provided was false (Pet. App. 2a; J.A. 16-17).

At trial, respondent admitted that he had responded falsely to questions on the security questionnaire concerning his criminal record and employment history (J.A. 1-12). He explained that he had made the false statements so that the information on the security questionnaire would be consistent with similar fabrications he had included on his employment application (J.A. 13). Respondent testified that he believed the information on the form would be used by Gulton only for classification of its employees and that he was unaware that the information was to be transmitted to the Department of Defense or to any other government agency (J.A. 13-14).[1] Respondent asserted that he had not read the form carefully when he signed it and thus did not notice either the words "Department of Defense" on the first page or the warning printed above the signature block (J.A. 15-16).

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[1] Respondent testified that he did not believe Gulton "would have either the resources or the inclination" to verify the data he had furnished (J.A. 17).

Prior to trial, respondent submitted a proposed jury instruction stating, inter alia, that a statement is fraudulent "if known to be untrue, and made or caused to be made with the intent to deceive the Government agency to whom submitted" (J.A. 50). The trial court rejected that proposal and instead instructed the jury that the intent element of Section 1001 requires a finding that respondent "did * * * [the] act or acts [charged] with knowledge * * * that the writing or document was false or fictitious" and that he "knew or should have known that the information was to be submitted to a government agency" (J.A. 25). Respondent objected to the instruction, contending that only actual knowledge that a statement is being made to an agency of the United States satisfies the intent element of Section 1001 (Tr. 84, 115).

On appeal, respondent again did not dispute that he had made false statements on the security questionnaire, but claimed only that he did not know the questionnaire would be sent to the government for purposes of a security clearance. Respondent contended that the trial court erred in failing to instruct the jury that it was required to find that he had actual knowledge that the statements were made in a matter within the jurisdiction of a federal agency (Pet. App. 3a).

2. The court of appeals reversed respondent's convictions (Pet. App. 1a-15a). The court held that in a prosecution under Section 1001 the government must prove beyond a reasonable doubt that the defendant knew at the time he made the false statement that it was made in a matter within the jurisdiction of a federal agency. The court recognized (Pet. App. 5a-6a) that its holding conflicted with decisions of the Fifth,

Sixth and Seventh Circuits.[2] In addition, it acknowledged that its construction of the intent requirement of Section 1001 is not mandated by the language of the statute, which it characterized as "ambiguous" (Pet. App. 6a).[3] However, the court concluded that the legislative history of Section 1001 and its predecessors, although "not entirely conclusive" (Pet. App. 7a), suggests that Congress intended that knowledge of the facts giving rise to federal jurisdiction be an element of the offense.

The court observed (Pet. App. 8a) that an earlier version of Section 1001 expressly required proof of an intent to defraud the government. In 1934 Congress removed the reference to intent to defraud and added the requirement that a statement be made in a matter within the jurisdiction of a federal agency. The court cited various statements made during congressional consideration of the 1934 amendment, in which legis-

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[2] *United States* v. *Baker*, 626 F.2d 512, 516 (5th Cir. 1980); *United States* v. *Stanford*, 589 F.2d 285, 297 (7th Cir. 1978), cert. denied, 440 U.S. 983 (1979); *United States* v. *Lewis*, 587 F.2d 854, 857 (6th Cir. 1978) (per curiam). The court observed (Pet. App. 4a-5a) that in other cases courts have assumed, without deciding, that knowledge of federal involvement is an element of a violation of Section 1001, citing *United States* v. *Cella*, 568 F.2d 1266, 1288 (9th Cir. 1978); *United States* v. *Candella*, 487 F.2d 1223, 1226-1227 (2d Cir. 1973), cert. denied, 415 U.S. 977 (1974); and *Ebeling* v. *United States*, 248 F.2d 429, 434-435 (8th Cir.), cert. denied, 355 U.S. 907 (1957).

[3] The court of appeals believed (Pet. App. 6a-7a) that the placement and punctuation of the terms "knowingly and willfully" do not indicate whether those terms modify only the phrase "makes any false, fictitious, or fraudulent statements" or the broader phrase "in any matter within the jurisdiction of any department or agency of the United States * * * makes any false, fictitious, or fraudulent statements."

lators suggested examples of false statements that would be covered by the amendment (Pet. App. 10a-12a). Although the court acknowledged that many of the legislators' comments addressed versions of the legislation that ultimately were not enacted, it concluded that the comments nonetheless indicated that the legislators believed the 1934 amendment would apply to cases in which the maker of a statement would have known that it was made in a matter within the jurisdiction of a federal agency (*id.* at 12a).[4] The court concluded on the basis of this legislative history "that Congress intended that knowledge of federal involvement be an element of the crime" and that "the defendant's knowledge of federal involvement is entirely relevant to the proper effectuation of the Congressional goals * * *" (*id.* at 12a-13a).

The court of appeals rejected the government's alternative argument that any requirement of knowledge of federal involvement was satisfied by the objective "should have known" portion of the jury instruction. In the court's view, the instruction that respondent "knew or should have known that the information was to be submitted to the government" was insufficient because it allowed the jury to return a conviction even if it believed that respondent did not actually know that his statements were within federal agency jurisdiction. The court concluded that under the subjective standard of criminal knowledge used by the Ninth Circuit the jury was required to find—beyond a reasonable doubt—that respondent had

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[4] In particular, the court pointed to Congress's concern with the presentation to the Department of the Interior of false papers concerning "hot oil" and with the use of false wage certificates submitted for payment to the Public Works Administration (Pet. App. 12a).

actual knowledge of federal involvement. Pet. App. 14a-15a.

SUMMARY OF ARGUMENT

Congress provided in 18 U.S.C. 1001 that "[w]hoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully * * * makes any false, fictitious or fraudulent statements or representations * * * shall be fined not more than $10,000 or imprisoned not more than five years, or both." The question presented by this case is whether, in a prosecution for violation of Section 1001, the government must prove that the defendant knew his false statement was made in a matter within federal agency jurisdiction. Three courts of appeals have held that such proof is not an element of the Section 1001 offense. The court of appeals in this case disagreed.

A. The language of Section 1001 makes clear that a statement must be in a matter within federal agency jurisdiction and that the defendant must know that the statement is false. Lacking from statutory text is any express requirement that the prosecution prove that the defendant knew of the facts supporting federal jurisdiction. Indeed, a natural reading of Section 1001 unambiguously suggests that there is no such requirement. The "in any matter" language is not phrased in a manner that would indicate that it forms a part of the statute's culpability requirement, and its placement at the beginning of the sentence effectively eliminates a reading under which it is modified by the words "knowingly and willfully," which follow. The court of appeals felt free to avoid the clear import of the statute as now worded because the wording was somewhat different prior to codification of Title 18 in 1948. But even as worded prior to

codification, the most natural reading of the statute is that knowledge of federal involvement is not an element of the offense.

B. The legislative purpose strongly supports the conclusion that Congress did not require knowledge of federal involvement as an element of the Section 1001 offense. Congress enacted Section 1001 in its present form in order "to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described." *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941). Requiring proof that a defendant knew his false statement was in a matter within federal agency jurisdiction would narrow significantly the scope of the protection provided by the statute for federal functions. In many cases, statements that are not made directly to a federal agency are elicited for the purpose of affecting government actions and are transmitted by their recipient to the federal government. For example, individuals submit applications to state, local, or private agencies in order to receive federal benefits or to secure federally funded contracts, or, as in this case, they submit information to a private defense contractor, which forwards it to the federal government for security clearance purposes. If such statements are false, they can cause serious harm to federal functions, quite without regard to whether, as in this case, the maker of the false statement claims he was unaware of any federal connection. The court of appeals' construction of Section 1001 will make it considerably more difficult to prosecute such false statements.

There is no mention in the legislative history of any requirement of knowledge of federal involvement. Instead, that history indicates that Congress wished to broaden the federal false statement statute to reach

a wide range of statements, including those that could interfere with the many New Deal programs that had recently begun. President Roosevelt refused to sign the first version of the new false statement legislation that Congress passed—a version that included both the "knowingly and willfully" language *and* a requirement of intent to defraud the United States—on the ground that it failed to reach any further than the existing, unsatisfactory statute and imposed lower penalties. Thereafter Congress eliminated the "intent to defraud the government" language—language that would have directly supported the court of appeals' holding here—and replaced it with the "in any matter" phrase that appears in the current Section 1001. That choice of broad language over more restrictive language that would have required an intent to deceive the government shows that Congress rejected a requirement of knowledge of federal involvement and thereby afforded comprehensive protection for federal functions. The excerpts from the legislative history cited by the court of appeals do not in any way contradict that conclusion.

C. Consideration of the purposes generally served by culpability criteria, on the one hand, and jurisdictional language, on the other, confirms our reading of Section 1001. The purpose of culpability requirements is to separate innocent conduct from blameworthy conduct. An individual who makes a statement he knows to be false is clearly engaged in blameworthy conduct and, in addition, runs the risk that he may incur criminal penalties under, *e.g.*, a state false pretenses statute. Thus, no additional requirement of knowledge of federal involvement is needed to avoid creation of a "snare for the unsuspecting." *United States* v. *Feola*, 420 U.S. 671, 685 (1975).

Jurisdictional language rarely doubles as an aspect of the culpability requirement in federal criminal statutes in the absence of an express indication of congressional intent. This Court and the courts of appeals have construed a variety of federal statutes as not requiring proof of knowledge of the facts supporting federal jurisdiction. Congress gave no indication that it intended a departure from this pattern when it enacted Section 1001.

ARGUMENT

PROOF THAT A DEFENDANT KNEW HIS FALSE STATEMENT WAS IN A MATTER WITHIN THE JURISDICTION OF A FEDERAL AGENCY IS NOT REQUIRED UNDER 18 U.S.C. 1001

The question presented by this case is whether, in a prosecution for making a false statement in violation of 18 U.S.C. 1001, the government must prove that the defendant knew that his statement was made "in [a] matter within the jurisdiction of [a] department or agency of the United States." Every court of appeals that has considered the issue, with the exception of the court of appeals in this case, has held that knowledge that a false statement is in a matter within federal agency jurisdiction is not an element of a Section 1001 offense. *United States* v. *Baker*, 626 F.2d 512 (5th Cir. 1980); *United States* v. *Stanford*, 589 F.2d 285 (7th Cir. 1978), cert. denied, 440 U.S. 983 (1979); *United States* v. *Lewis*, 587 F.2d 854 (6th Cir. 1978) (per curiam).[5] The

[5] The court of appeals in this case listed the elements generally considered necessary for a conviction under Section 1001: (1) a statement; (2) falsity; (3) specific intent; (4) materiality; and (5) agency jurisdiction (Pet. App. 2a-

court of appeals in this case disagreed, holding that a defendant cannot be convicted under Section 1001 unless the government establishes beyond a reasonable doubt not only that the defendant's statement was made in a matter within federal agency jurisdiction and that the defendant knew the statement was false, but also that the defendant knew of the facts giving rise to federal jurisdiction.

The court of appeals' reading of Section 1001 would undercut Congress's purpose of affording broad protection of federal functions and funds from fraud. If an individual could evade prosecution by claiming that he did not realize his false statements were in a matter within federal agency jurisdiction, it would often be difficult—and in some cases impossible—for the government to prosecute when false statements are not made directly to the government, but reach it through an intermediary, such as a state or local agency or, as in this case, a private employer.

It is apparent from the statutory language and the legislative history that Congress did not intend such a result. Consideration of the purposes generally served by culpability requirements, on the one hand, and by jurisdictional criteria, on the other, reinforces the conclusion that the government is not required to prove knowledge of federal involvement in order to establish a violation of Section 1001.

3a n.2, citing *United States* v. *Rose*, 570 F.2d 1358, 1363 (9th Cir. 1978)).

In some Section 1001 cases, courts have noted that the evidence indicated that a defendant knew of federal involvement. However, these cases do not hold squarely that such knowledge is an essential element of the violation. See cases cited at note 2, *supra*; *United States* v. *Lange*, 528 F.2d 1280, 1287 n.11 (5th Cir. 1976).

A. Section 1001 on Its Face Does Not Require Proof That a Defendant Knew His False Statement Concerned a Matter Within Federal Agency Jurisdiction

1. The starting point for interpretation of a statute is the language of the statute itself. *United States* v. *Turkette*, 452 U.S. 576, 580 (1981); *Rubin* v. *United States*, 449 U.S. 424, 429-431 & n.8 (1981); *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). Section 1001 provides that "[w]hoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully * * * makes any false, fictitious or fraudulent statements or representations * * * shall be fined not more than $10,000 or imprisoned not more than five years, or both."

This language makes it clear that a false statement must be made in a matter within the jurisdiction of a federal department or agency in order to fall within the prohibition of the statute. See, *e.g.*, *Bryson* v. *United States*, 396 U.S. 64, 70 (1969); *United States* v. *Kraude*, 467 F.2d 37, 38 (9th Cir.), cert. denied, 409 U.S. 1076 (1972); *Lowe* v. *United States*, 141 F.2d 1005, 1006 (5th Cir. 1944). But because Section 1001 refers broadly to "any" matter within federal agency jurisdiction, the courts of appeals have properly concluded that a statement need not be made directly to the federal government in order to fall within its proscription. See, *e.g.*, *United States* v. *Hooper*, 596 F.2d 219, 222-223 (7th Cir. 1979); *United States* v. *Candella*, 487 F.2d 1223, 1227 (2d Cir. 1973), cert. denied, 415 U.S. 977 (1974); *United States* v. *Matanky*, 482 F.2d 1319, 1322 (9th Cir.), cert. denied, 414 U.S. 1039 (1973);

United States v. *Waters*, 457 F.2d 805 (3d Cir. 1972) (per curiam); *Ebeling* v. *United States*, 248 F.2d 429 (8th Cir.), cert. denied, 355 U.S. 907 (1957). A false statement is "in [a] matter within the jurisdiction" of a federal agency if it is to be used in such a matter, whether or not it passes through an intermediary before it reaches the government. See, *e.g.*, *United States* v. *Candella*, 487 F.2d at 1227. Here, respondent acknowledges that his statements concerning his criminal record and prior employment (which were to be used in determining whether he should receive a government security clearance) were in a matter within the jurisdiction of the Department of Defense. See Pet. App. 3a.

It is also clear from the language of the statute that in order to violate Section 1001 the defendant must make a false statement "knowingly and willfully," *i.e.*, he must know his statement is false at the time he makes it. See, *e.g.*, *Bryson* v. *United States*, 396 U.S. at 69-70; *United States* v. *Lange*, 528 F.2d 1280, 1288-1289 (5th Cir. 1976). Respondent admits that he knew his statements about his criminal record and prior employment were false when he made them. See Pet. App. 3a.[6]

The plain language of Section 1001 does not impose any additional requirement that a defendant be aware that his statement is in a matter within the

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[6] Some courts have suggested that actual knowledge of falsity is not necessary, but that it is sufficient if the defendant spoke with reckless disregard of the truth or with a conscious purpose to avoid learning the truth. See *United States* v. *Egenberg*, 441 F.2d 441, 444 (2d Cir.), cert. denied, 404 U.S. 994 (1971); *United States* v. *Clearfield*, 358 F. Supp. 564, 574 (E.D. Pa. 1973).

jurisdiction of a federal agency.[7] As the Sixth Circuit has noted, "the language of Section 1001 does not require * * * specific proof that the person committing the fraud did so with the knowledge that the fraudulent statement would affect federal funds." *United States* v. *Lewis*, 587 F.2d at 857. No such "unexpressed requirement" (*ibid.*) appears on the face of the "in any matter" phrase, which is worded in terms of a straightforward description of facts necessary to support federal jurisdiction, rather than as a culpability requirement.

Congress could have chosen to draft the statute to begin with the words "[w]hoever, *with intent to deceive the United States* * * *"—language that would have directly supported the court of appeals' holding here. Alternatively, it could have begun with the phrase "[w]hoever, *knowing the statement is made* in any matter within the jurisdiction of any department or agency of the United States * * *." Indeed, had Congress intended the result reached below, such wording would have been a natural choice in view of its use of that very construction later in Section 1001, when it referred to making or use of a false writing or document "knowing the same to contain any false, fictitious or fraudulent statement or entry * * *." The fact that Congress did not word the "in any matter" phrase in this manner or use other language ap-

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[7] In *Morissette* v. *United States*, 342 U.S. 246, 263 (1952), the Court noted that "mere omission * * * of intent [in the statute] will not be construed as eliminating that element from the crimes denounced." Here the statute includes the words "knowingly and willfully" and therefore is not silent on the subject of intent. The question is whether the words "knowingly and willfully" should be read to apply to more than the making of a false statement, *i.e.*, whether they extend also to the existence of facts supporting federal jurisdiction.

propriate to the purpose is evidence that it did not intend to make knowledge of federal involvement an element of the Section 1001 offense.

Moreover, a natural reading of Section 1001 does not permit the importation of an unexpressed requirement of knowledge of federal involvement. The placement of the "in any matter" language as an introductory phrase makes it stand separately, as a specification of facts necessary to support federal jurisdiction, rather than serving double duty as an added feature of the culpability requirement. It seems clear that most readers would conclude that the adverbs "knowingly and willfully" modify the verbs and objects that follow, not the phrase that precedes them.

2. Despite the apparent clarity of the statutory language, the court of appeals characterized Section 1001 as "ambiguous" on this point (Pet. App. 6a). The court concluded (*id.* at 6a-7a) that the placement of the "in any matter" language before (rather than after) the words "knowingly and willfully" must be discounted because the order of the phrases originally had been reversed. The phrases were placed in their present order at the time the criminal code was recodified in 1948. As the court of appeals pointed out (*id.* at 7a), the 1948 revision was not meant to be a "substantive change" (see *United States* v. *Bramblett*, 348 U.S. 503, 508 (1955)).

But the fact that Congress did not originally place the "in any matter" phrase at the beginning of the false statement provision does not suggest that the structure of the statute is without significance, or that the "in any matter" language might double as a feature of the culpability requirement. Even as worded prior to codification, the most natural reading of the statute is inconsistent with the court of

appeals' holding. The language in question first appeared in the statute with the passage of the Act of June 18, 1934, ch. 587, 48 Stat. 996.[8] In the 1934 Act, Congress placed the "in any matter" phrase at the very end of the false statement provision, far removed from the "knowingly and willfully" language. In addition, the "in any matter" phrase was separated by a comma from the remainder of the statute.[9] Thus, the original structure of the statute itself suggests that the "in any matter" phrase was not part of the culpability requirement. While the original wording of Section 1001 may not have the crystal clarity of the current version, the construction for which we contend thus is the most natural and logical reading for both versions.[10]

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[8] The 1934 Act stated in pertinent part (48 Stat. 996-997):

> [W]hoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device, a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States is a stockholder; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

[9] The comma separating the "in any matter" language from the rest of the false statement provision was removed in 1938 when the statute was divided into subsections. Act of Apr. 4, 1938, ch. 69, 52 Stat. 197. However, no substantive change was made in the false statement provision at that time either. See *United States* v. *Bramblett*, 348 U.S. at 508 n.8. Removal of the comma thus appears to have been accidental. Cf. *United States* v. *Bass*, 404 U.S. 336, 340 n.6 (1971).

[10] The purpose of the 1948 recodification was generally to prune verbose phrases, rewrite ambiguous terms, and eliminate

B. Interpretation of Section 1001 to Include an Unexpressed Requirement That a Defendant Knew His False Statement Concerned a Matter Within the Jurisdiction of a Federal Agency Would Be Inconsistent With the Underlying Legislative Purpose

In *United States* v. *Feola*, 420 U.S. 671 (1975), the Court concluded that Congress did not intend to require proof that a defendant charged with violating the federal assault statute, 18 U.S.C. 111, knew that the victim of the assault was a federal officer. The Court reasoned that "in order to effectuate the congressional purpose of according maximum protection to federal officers by making prosecution for assaults upon them cognizable in the federal courts, § 111 cannot be construed as embodying an unexpressed requirement that an assailant be aware that his victim is a federal officer." 420 U.S. at 684. Analysis of the legislative purpose underlying Section 1001 likewise indicates that Congress did not require proof that a defendant knew of the facts supporting federal jurisdiction in order to establish an offense under that statute.

1. This Court has consistently recognized that Congress's purpose in extending Section 1001 to its current scope was to afford broad protection from

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archaic expressions. See H.R. Rep. 304, 80th Cong., 1st Sess. 8 (1947). Thus, to the extent the 1934 Act might have been read to suggest that culpability depended on knowledge of federal involvement, the reorganization of the statutory language can properly be regarded as an attempt to clarify Congress's original intention that the "in any matter" phrase serve simply as the predicate for federal jurisdiction. This understanding of congressional intent is consistent with the manner in which courts have construed such jurisdictional language in other federal criminal statutes. See pages 37-40, *infra*.

the harm to federal functions that could result from false statements. The Court explained in *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941), that the 1934 amendment to the federal false statement statute "indicated the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described." The Court went on to hold that the statute is not confined to false statements that result in a pecuniary or property loss to the government. In *United States* v. *Bramblett*, 348 U.S. at 507, the Court, in holding that the statute reaches false statements made in connection with claims submitted to the legislative branch, admonished that "[t]here is no indication in either the committee reports or in the congressional debates that the scope of the statute was to be in any way restricted." Most recently, in *Bryson* v. *United States*, 396 U.S. 64 (1969), the Court held that Section 1001 would reach false statements made in affidavits submitted to a federal agency, even if the agency could not constitutionally require submission of the information. The Court stressed that "there is a valid legislative interest in protecting the integrity of official inquiries" and that the term "jurisdiction" therefore "should not be given a narrow or technical meaning for purposes of § 1001." 396 U.S. at 70 (citations omitted). The Court in *Bryson* explained that its holding in *Gilliland* was "based on the Court's concern that the statute be given a broad reading in order to protect the Government" from deceptive practices. 396 U.S. at 70 n.9.

Congress's broad purpose in enacting Section 1001 leaves little room for a restrictive interpretation of the statute that would cut back significantly on the

protection it provides for federal functions. Here, as in *Feola*, construction of the statute to include an unexpressed requirement that a defendant be aware of the facts supporting federal jurisdiction would undermine the legislative purpose. That is because, "[i]n furthering [the purposes of protecting federal funds and functions from fraudulent interference], it is irrelevant whether defendant knew that his intentionally false statements might eventually influence a federal agency." *United States* v. *Baker*, 626 F.2d at 516. Fraud that can cause federal agencies to take action "results in the perversion of the authorized functions of these agencies, whether or not the defendants * * * were aware of the agency involvement." *United States* v. *Stanford*, 589 F.2d at 297-298.

There can be no doubt that the construction of Section 1001 favored by the court below would interfere seriously with the protection of federal funds and functions. Requiring proof beyond a reasonable doubt, not only that a defendant knew his statement was false, but also that he knew it was made in a matter within federal agency jurisdiction, would diminish significantly the government's ability to obtain convictions in many cases in which false statements have the potential to do significant damage to federal operations. Much information that is not transmitted directly to the federal government nevertheless is capable of affecting federal functions because it ultimately is used in connection with a federal program. For example, many federal benefit programs, including those relating to public welfare, medical care, employment training, and housing, are administered primarily through state, local, or private agencies. Potential contractors under, or bene-

ficiaries of, such programs normally do not submit applications, claims, or other information directly to the federal government; rather, they deal with intermediary individuals or agencies, which use the information to award contracts or to determine eligibility and extent of federal benefits that will be paid.[11] Subcontractors on government contracts normally submit to the prime contractor statements concerning prices, costs, and performance standards; that information forms a basis for the prime contractors to recover payments from the government and to certify the completion of work in accordance with contract specifications.[12] Sellers of a commodity subject to a government pricing program may provide certifications to purchasers; the information is then used to classify the commodity for allocation and pricing purposes under federal guidelines.[13] And, as in this

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[11] See, *e.g.*, *United States* v. *Baker*, *supra* (public housing); *United States* v. *Candella*, *supra* (federally funded urban renewal program); *United States* v. *Stanford*, *supra* (welfare benefits); *United States* v. *Lewis*, *supra* (same); *United States* v. *Cella*, *supra* (medical benefits); *United States* v. *Matanky*, *supra* (same); *United States* v. *Kraude*, *supra* (same); *United States* v. *Hooper*, *supra* (Upward Bound Program); *United States* v. *Markee*, 425 F.2d 1043 (9th Cir.), cert. denied, 400 U.S. 847 (1970) (FHA insurance); *United States* v. *Mellon*, 96 F.2d 462 (2d Cir.), cert. denied, 304 U.S. 586 (1938) (same).

[12] See, *e.g.*, *United States* v. *Balk*, 706 F.2d 1056 (9th Cir. 1983); *United States* v. *Bass*, 472 F.2d 207 (8th Cir.), cert. denied, 412 U.S. 928 (1973); *Ebeling* v. *United States*, *supra*; 32 C.F.R. XXIII (subcontracting policies and procedures).

[13] See, *e.g.*, *United States* v. *Wolf*, 645 F.2d 23 (10th Cir. 1981) (mandatory petroleum allocation program).

case,[14] private contractors engaged in defense, atomic energy, or other specialized work for the government obtain information from their employees and forward it to the federal government, which conducts security investigations and grants security clearances on the basis of the information provided.

In each of these situations, false statements that are not submitted directly to the government have the capacity to interfere seriously with the integrity of a federal program: they can induce the payment of federal funds not authorized by statute (*e.g.*, *United States* v. *Stanford*, *supra* (AFDC benefits and food stamps)); endanger the public safety and national defense by causing the armed forces to use defective parts (*e.g.*, *United States* v. *Balk*, 706 F.2d 1056 (9th Cir. 1983) (subcontractor submitted falsified documents certifying that welding work met Navy specifications)); or threaten public health and safety by leading federally regulated nuclear power plants to incorporate substandard materials (*e.g.*, *United States* v. *Green*, No. 83-1107 (9th Cir. argued Nov. 16, 1983)). As in this case, false statements could endanger national security by inducing the grant of a security clearance to an individual who should not have access to sensitive defense information.

Construction of Section 1001 to require proof that a defendant knew his false statements were in a matter within federal agency jurisdiction would make it impossible to obtain convictions in many of these cases, even when it is likely that a defendant had

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[14] See also *Ogden* v. *United States*, 303 F.2d 724 (9th Cir. 1962); *Pitts* v. *United States*, 263 F.2d 353 (9th Cir.), cert. denied, 360 U.S. 919 (1959); *United States* v. *Giarraputo*, 140 F. Supp. 831 (E.D.N.Y. 1956).

such knowledge. A jury may be able to infer from surrounding circumstances that a defendant knew his statement was false at the time he made it. But awareness of federal involvement in a given situation is often peculiarly within the knowledge of the defendant; when a false statement is not submitted directly to a federal agency, such awareness cannot be inferred simply from the making of the statement. Even in a case like this one, in which a form gives clear notice that statements will be submitted to a federal agency, the defendant may assert that he did not take the time to read the notice. Here the form was captioned "Department of Defense Personnel Security Questionnaire," and a large warning over respondent's signature explained that false statements could result in prosecution under Section 1001. See J.A. 29, 33, 34, 38. Nevertheless, respondent claimed that he failed to notice either the caption or the warning, and the government was unable to provide direct evidence to the contrary. The court below compounded the difficulties of proof by holding (Pet. App. 14a-15a) that the government could not satisfy its burden of proof by showing that under the particular circumstances a reasonable person should have known that a statement was in a matter within the jurisdiction of a federal agency; instead, the government must establish beyond a reasonable doubt that a defendant had actual subjective knowledge of federal involvement. In many cases, such proof will be impossible, even though the potential for harm to federal functions is clear.[15]

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[15] We do not suggest that knowledge of federal involvement has no relevance whatsoever to proof of a Section 1001 offense. As the court of appeals noted in *Stanford*, "knowledge of federal involvement may be one circumstance to be considered in assessing the potential threat the statement may be to the

2. The court of appeals purported to recognize (Pet. App. 12a) that the purpose of Section 1001 is to protect federal funds and functions from fraud. In addition, it did not attempt to rebut the proposition that false statements can interfere seriously with federal functions even when a defendant was unaware of federal involvement. But the court of appeals inexplicably concluded (Pet. App. 12a-13a) that a defendant's knowledge of federal involvement is "entirely relevant" to the proper effectuation of congressional goals.

In support of its conclusion, the court of appeals relied on scattered excerpts from the legislative history. The court acknowledged that the materials on which it based its interpretation were "perhaps not entirely conclusive" (Pet. App. 7a). But that characterization is far too charitable. In fact, there is no mention in the legislative history of any requirement that the government prove that a defendant knew his statements were made in a matter within federal agency jurisdiction. Rather, the legislative history supports this Court's conclusion (see pages 18-19, *supra*) that Congress enacted an expansive statute that would give broad protection to federal functions. In addition, it indicates that Congress rejected language that would have required a showing of intent to deceive the government—the functional equivalent of the knowledge requirement imposed here by the court of appeals. The statements the court of appeals found to be significant are in fact either irrelevant

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proper functioning of the federal agency involved" (589 F.2d at 297). Cf. also *United States* v. *Feola*, 420 U.S. at 686. But this is very different from requiring proof of knowledge of federal involvement beyond a reasonable doubt as a separate element of a Section 1001 offense.

or addressed to more restrictive versions of the proposed legislation, which ultimately were rejected in favor of the current language of Section 1001. In short, there is no suggestion in the legislative history that Congress acted to restrict the protection afforded to federal functions under Section 1001 by imposing, sub silentio, a requirement that the prosecution prove beyond a reasonable doubt that a defendant was aware of federal involvement when he made a false statement.

a. Congress extended the federal false statement statute to its present scope in 1934. That amendment unquestionably was designed to broaden the statute in response to the federal government's increasing needs for protection from fraud.[16] The original statute, the Act of Mar. 2, 1863, ch. 67, 12 Stat. 696, was enacted in "the wake of a spate of frauds" upon the government (*United States* v. *Bramblett*, 348 U.S. at 504); it applied only to false statements made for the purpose of obtaining payment of a claim upon the United States. In 1918, Congress added a proscription on false statements made "for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States * * *." Act of Oct. 23, 1918, ch. 194, 40 Stat. 1015.[17]

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[16] The Court reviewed the history of the federal false statement statute in *United States* v. *Bramblett*, 348 U.S. at 504-508.

[17] Following the 1918 amendment, the federal false statement statute (then Section 35 of the Criminal Code) provided:

> * * * [W]hoever, for the purpose of obtaining or aiding to obtain the payment or approval of [a] claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any

Congress intended the 1918 amendment to broaden the scope of the false statement statute. See *United States* v. *Gilliland*, 312 U.S. at 93. However, in *United States* v. *Cohn*, 270 U.S. 339 (1926), the Court construed the phrase "defrauding the Government of the United States" as limited to "fraudulent[ly] causing * * * [a] pecuniary or property loss" to the federal government. *Id.* at 346-347. In part because of the *Cohn* decision, federal agencies found that the false statement statute was inadequate to meet their needs. See *Gilliland*, 312 U.S. at 93. The restricted scope of the statute became a particularly serious problem with the advent of New Deal programs in the 1930s. Early in 1934 the Secretary of the Interior submitted to the Senate Committee on the Judiciary draft legislation designed to address several specific situations in which submission of false reports was creating difficulties under certain federal programs. See S. Rep. 288, 73d Cong., 2d Sess. 1-2 (1934).[18] The Secretary noted that "[a] large number of cases [involving presentation of false written instruments] are arising constantly in the enforcement of the laws relating to the Interior

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department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

[18] The Court recounted the legislative history of the 1934 amendment in *Gilliland*, 312 U.S. at 92-95.

Department; the transaction of business in connection with the Public Works Administration; in violations of the Code of Fair Competition for the Petroleum Industry; and enforcement of regulations under section 9(c) of the National Industrial Recovery Act of June 16, 1933." S. Rep. 288, *supra*, at 1. The Secretary informed Congress that the new legislation was necessary because neither the perjury statutes nor any other law would reach such cases (*ibid.*).

Congress failed in its first effort to expand the false statement statute in 1934. The Senate broadened the scope of the proposed legislation by striking out the references to individual agencies and replacing them with the words "any department or agency of the United States," so that the bill imposed penalties on persons "who knowingly and willfully" made false documents "pertaining to any other matter within the jurisdiction of any department or agency of the United States." 78 Cong. Rec. 2858 (1934). But the House of Representatives subsequently narrowed the legislation by adding the requirement that a false instrument be made "with intent to defraud the United States." H.R. Rep. 829, 73d Cong., 2d Sess. 2 (1934). The House version was adopted, but President Roosevelt refused to sign the legislation. In a message to Congress, he explained that existing law already covered the offenses described in the new legislation and in fact prescribed greater penalties for them. 78 Cong. Rec. 6778-6779 (1934).

Within a few months the Senate Committee on the Judiciary reported another bill that included an amendment to the false statement statute. S. Rep. 1202, 73d Cong., 2d Sess. (1934).[19] The proposed

[19] The new amendment was attached to a bill providing for penalties for destruction of certain types of federal property.

amendment deleted from the existing statute the phrase "for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States" (40 Stat. 1015) and replaced it with the words "in any matter within the jurisdiction of any department or agency of the United States" (78 Cong. Rec. 11270-11271 (1934)). Both Houses passed the bill, and the President signed it into law. 78 Cong. Rec. 11271, 11513, 12452 (1934).

On its face the new language broadened the false statement statute considerably. The statute no longer required that a false statement be made with the "intent of cheating and swindling or defrauding" the government. Instead, it prescribed penalties for false statements made in matters within federal agency jurisdiction, with no requirement of intent to defraud or deceive the government.[20]

It is particularly significant that Congress chose not to use the phrase "intent to defraud the government"

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[20] The "in any matter" language clearly does not have the same meaning as the "intent to defraud the government" phrase. The "in any matter" language "compensated" for the deleted "intent to defraud" phrase only in the sense that it indicated that "not all falsifications but only those made to government organs were reached" (*Bramblett*, 348 U.S. at 508). In using these words to describe the 1934 change, the Court in *Bramblett* presumably did not mean that false statements must be made directly to a federal agency in order to come within Section 1001. Even at the time *Bramblett* was decided, the lower courts had ruled that a statement need not be made to the federal government itself in order to be covered by the statute. See, *e.g.*, *United States* v. *Mellon*, 96 F.2d at 463; *United States* v. *Catamore Jewelry Co.*, 124 F. Supp. 846, 848 (D.R.I. 1954); *United States* v. *Ganz*, 48 F. Supp. 323, 325 (D. Mass. 1942).

or "intent to deceive the government"—the effect of which would indeed have been to require knowledge that the statement was being made to the government. The earlier statute included both the "knowingly and willfully" language and the "intent to defraud the government" phrase. Congress again used both sets of words when it passed the first bill in its effort to expand the false statement statute in 1934. Following President Roosevelt's veto of that bill, accompanied by the message that the legislation did not succeed in expanding the coverage of existing law, Congress must have drafted the new amendment with considerable care. Had it intended to limit the amended statute to situations in which the maker of a false statement knew about federal involvement, while at the same time removing the limitation to cases of pecuniary or property loss, Congress surely would have used not only the words "knowingly and willfully," but also some variation on the "intent to defraud" phrase, *e.g.*, "intent to deceive the Government of the United States." See *Gilliland*, 312 U.S. at 94 (noting omission of the "limiting words" in the enacted version of the 1934 amendment).[21] Where Congress includes limiting language in an early version of a bill, but deletes it from the version of the legislation that ultimately is enacted, it may be presumed that the limitation was not intended. *Arizona* v. *California*, 373 U.S. 546, 580 (1963); *Gilliland*, 312 U.S. at 94.

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[21] The Court in *Gilliland* focused on the removal of the restriction to cases of pecuniary or property loss to the government. But if this were all Congress had sought to achieve, it could merely have substituted "intent to deceive" for "intent to defraud." Instead, it removed any such references, leaving only the words "knowingly and willfully" to define the necessary culpability under the statute.

The background against which the 1934 amendment was passed also suggests that Congress in fact anticipated that the false statement statute would reach statements that were not made directly to the government, and whose makers might not be aware of federal involvement. The amendment was enacted in the midst of the New Deal and was at least in part a response to specific problems that had arisen in connection with New Deal programs. Some of these programs relied on broad delegations of authority to private groups, which were to perform functions essential to the federal statutory scheme. For example, under Section 3 of the National Industrial Recovery Act, local industry advisory committees composed of representatives of private businesses administered codes of fair competition under the general supervision of federal agencies. Act of June 16, 1933, ch. 90, 48 Stat. 196.[22] See *Schechter Poultry Corp.* v. *United States*, 295 U.S. 495, 524 (1935). The industry advisory committees were responsible, inter alia, for gathering information and prescribing conduct on the basis of that information. See *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 179 (1940). Individuals who made false statements to such private groups could have claimed they were unaware that their statements were in a matter within federal agency jurisdiction, but the resulting harm to operation of the relevant programs would have been clear. Since the range of Congress's concerns clearly included protection of the integrity of the new programs, it is unlikely that Congress would have elected

[22] In addition, under Sections 2(a) and 201(a) of the NIRA, 48 Stat. 195, 200, the President was authorized to use state and local officers and employees in order to administer programs under the Act.

to exclude coverage of these statements in cases in which an individual claimed ignorance of the federal connection.[23]

b. The court of appeals suggested (Pet. App. 11a-12a) that various excerpts from the 1934 legislative history show that Congress meant to delete from the statute the requirement of fraudulent intent to cause pecuniary loss to the government, but not a requirement of knowledge that a false statement was made in a matter within federal agency jurisdiction. But several of the statements cited by the court of appeals —the two excerpts from H.R. Rep. 829, *supra*, and the statement of Representative McKeown—refer to the version of the legislation that contained the "intent to defraud the government" language, which never became law. These statements deserve little weight because they relate to a bill that indisputably would have required knowledge of federal involvement, but that was vetoed and thereafter reenacted deleting the language upon which such a requirement would have been predicated.

The court of appeals also referred to statements on the floor of the Senate to the effect that the new leg-

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[23] Indeed, the Secretary of the Interior specifically referred to the problem of submission of false written instruments in connection with enforcement of the code of fair competition for the petroleum industry when he forwarded the proposed legislation in 1934. S. Rep. 228, *supra*, at 1 (letter of Secretary Ickes). While he did not provide details, it seems likely that the Secretary was referring to both statements made to federal agencies and statements made to private groups charged with administration of the code, since, at the time the 1934 amendment was under consideration, the industry advisory committees for the petroleum industry were playing a large role in the federal efforts to regulate "hot oil" shipments and thereby stabilize the industry. See *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. at 171-185.

islation was directed at those who made false affidavits or certificates or submitted fictitious bids and to the fact that the 1934 amendment was expressly aimed at the presentation of false papers regarding "hot oil" and use of false wage certificates to obtain reimbursement from the Public Works Administration. The court believed that these situations were ones in which individuals would know their false statements were made in a federal matter and that Congress therefore must have intended to require proof of such knowledge as an element of the Section 1001 offense. But even if the court were correct that there would always be knowledge of federal involvement in the "hot oil" and wage certificate cases,[24] Congress nevertheless made the choice to expand the amendment beyond the agencies named in the original draft legislation offered by the Secretary of the Interior, so that it covered "any department or agency of the United States." Congress's express references to several of the more obvious applications of the 1934 amendment do not imply any intent to exclude other

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[24] In fact, the specific examples mentioned during congressional consideration of the legislation were not necessarily confined to situations in which the maker of the false statement would be aware of federal involvement. It is at least possible that, *e.g.*, a subcontractor would submit a fictitious bid to a contractor and claim that he did not realize that the bid was for a government project. See, *e.g.*, *Ebeling* v. *United States*, *supra*. There is no indication that Congress intended to exclude that class of fictitious bids from coverage under the 1934 amendment. As we explained at page 31, note 23, *supra*, private groups participated heavily in administration of the federal program under which "hot oil" shipments were regulated.

applications that would fall within the language of the statute. "The legislative history [of Section 1001] does not suggest that the purpose of the amendment was in any way intended to be confined to the specific situations which were mentioned." *United States* v. *McCue*, 301 F.2d 452, 454-455 (2d Cir.), cert. denied, 370 U.S. 939 (1962). See also *Gilliland*, 312 U.S. at 95 (provisions of the 1934 amendment "were not limited to § 9(c) of the National Industrial Recovery Act," but extended also to subsequently enacted statute and regulations); *United States* v. *Adler*, 380 F.2d 917, 922 (2d Cir.), cert. denied, 389 U.S. 1006 (1967) ("There is nothing to suggest * * * that Congress in enacting § 1001 intended to conserve the energies of only certain agencies").

To summarize, Congress, in enacting the 1934 amendment, said nothing that suggests an intent to require proof that a defendant knew his statement was in a matter within federal agency jurisdiction; in fact, the legislative history contains no reference whatsoever to such a requirement. Instead, Congress indicated that it wished to broaden the false statement statute to reach a very wide range of false statements, including new types of fraud that threatened to impair the growing range of federal programs emerging under the New Deal, and it chose not to include in the statute the requirement of an intent to deceive the government. In view of its broad legislative purpose, Congress must have intended to reach all willfully false statements made in matters within federal agency jurisdiction, regardless of whether the maker claims that he did not realize he was deceiving the federal government.

C. Construction of Section 1001 Not to Require Proof That a Defendant Knew His False Statement Was in a Matter Within Federal Agency Jurisdiction Is Consistent With the Purposes Generally Served by Culpability Requirements and by Jurisdictional Language

Our reading of Section 1001 is consistent with the purposes generally served by culpability requirements, on the one hand, and by jurisdictional language, on the other.

1. In general, culpability or scienter requirements —such as the requirement that an act be done knowingly and willfully—serve to distinguish blameworthy conduct from innocent conduct. Concepts such as "guilty knowledge" or "scienter" have always operated to "protect those who were not blameworthy in mind from conviction of infamous common-law crimes." *Morissette* v. *United States*, 342 U.S. 246, 252 (1952). See also, *e.g.*, *Lambert* v. *California*, 355 U.S. 225, 228-230 (1957).

Under Section 1001, the requirement that the government prove that the defendant knew his statement was false at the time he made it serves the purpose of separating blameworthy conduct from innocent conduct. Requiring such proof ensures that those who make false statements because of negligence or mistake will not be penalized. Individuals who make statements they know to be false cannot claim plausibly that they believed they were engaging in innocent conduct. Compare *United States* v. *Freed*, 401 U.S. 601, 609 (1971). Indeed, the making of a statement one knows to be false must be regarded as malum in se. There is thus no need for any additional culpability requirement—*i.e.*, proof that a defendant knew his false statement was in a matter within federal agency

jurisdiction—in order to ensure that Section 1001 reaches only blameworthy conduct.[25]

Moreover, at least in some circumstances, making a false statement may be a violation of state law, regardless of the identity of the victim. For example, in California an individual who makes a false statement in an application for employment might risk criminal penalties on the basis that he obtained (or attempted to obtain) monetary advantage through false pretenses. See Cal. Penal Code § 484 (West 1970) (theft, including theft by false pretenses); see also *id.* § 532 (false pretenses). All American jurisdictions have adopted statutes covering theft by false pretenses. See *Model Penal Code and Commentaries (Pt. II)*, § 223.3, at 180 & n.1 (1980); Pearce, *Theft by False Promises*, 101 U. Pa. L. Rev. 967 (1953).[26]

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[25] The court of appeals found it significant that under the federal perjury statute, 18 U.S.C. 1621, the defendant's making of an oath ensures that he knows his false statements could subject him to criminal prosecution (Pet. App. 13a n.14). But one who makes a false statement in virtually any context other than statements to family and friends must suspect that the statement might subject him to criminal prosecution, perhaps under a state false pretenses statute. See text *infra*. In any event, analogies to the perjury statute do not provide guidance with respect to congressional intent underlying Section 1001. After all, Congress amended the federal false statement statute in 1934 in part because it believed that the perjury statute could not be used to prosecute many false statements that were interfering seriously with federal functions. 78 Cong. Rec. 2858 (1934) (statement of Sen. Ashurst); 78 Cong. Rec. 2152 (1934) (letter of Secretary Ickes); H.R. Rep. 829, 73d Cong., 2d Sess. 1-2 (1934).

[26] The court of apeals suggested that this case was distinguishable from *Feola* because, "unlike making a false statement, committing an assault is a crime—even apart from the federal statute—in every state of the Union" (Pet. App. 14a

Thus, an individual who is unaware that his false statement is in a matter within federal agency jurisdiction nevertheless should be aware that he runs the risk of criminal penalties under state law.

Because it is inherently wrongful for an individual to make a statement he knows to be false and on which he knows the actions of others may depend, and because at least some such statements are subject to state criminal penalties, there is no danger that a defendant will be *unfairly* surprised if his conduct turns out to violate Section 1001. As in *Feola*, construction of the statute, in accordance with its language, to contain no requirement of knowledge of the facts supporting federal jurisdiction does not create any "snare for the unsuspecting" (420 U.S. at 685). Like the respondent in *Feola*, the defendant in a Section 1001 case "knows from the very outset that his planned course of conduct is wrongful. The situation is not one where legitimate conduct becomes unlawful solely because of the identity of the individual or agency affected. In a case of this kind the offender takes his victim as he finds him." 420 U.S. at 685. Thus, the respondent here, like the respondent in *Feola*, may

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n.14). Since all states have some form of false pretenses statute, the court of appeals' distinction of *Feola* rests on an incorrect premise. Although state statutes would not cover all possible false statements made in a private context, they clearly would reach a number of false statements, perhaps including those made by respondent in this case. To the extent respondent's false statements were made for the purpose of obtaining and keeping a job, he might be held to have committed the offense of theft by false pretenses if his employer had relied on the false representations in paying his salary. At the very least, an individual who makes a false statement to his employer must be aware that he is venturing close to the line that separates criminal from noncriminal conduct.

have been surprised to learn that the victim of his wrongful conduct was governmental, rather than private, but this would not suggest that his conduct may not be penalized under federal law.[27]

2. The fact that the "in any matter" phrase establishes the basis for federal jurisdiction to penalize false statements makes it especially unlikely that any culpability requirement attaches to that phrase. In most federal criminal statutes, the purpose of jurisdictional language is confined to providing the basis for jurisdiction of federal courts; such language does not normally double as a component of the mens rea required to violate the statute. Thus, the Senate Judiciary Committee has explained that the draft federal criminal code "states the general rule that proof of culpability is not required with respect to any fac-

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[27] Respondent suggested in the court of appeals that knowledge of federal involvement must be an element of a Section 1001 offense because otherwise the statute would reach "totally innocent, private acts" (Appellant's Br. 15). That suggestion is hardly credible. A statement that is made with the knowledge that it is false cannot be characterized as a "totally innocent" act. Moreover, not all false statements that eventually find their way to the federal government would constitute violations of Section 1001. In general, a false statement is "in any matter within the jurisdiction of a department or agency of the United States" only if the federal government has an "official and immediate" interest in the subject matter of the statement. *Ogden* v. *United States*, 303 F.2d at 743. Thus, if an individual gives false information to a neighbor, and the neighbor later communicates that information to a federal agency, there would be no Section 1001 violation, since the statement was not in a matter within agency jurisdiction at the time it was made. Cf. *Terry* v. *United States*, 131 F.2d 40 (8th Cir. 1942) (statement was not within the jurisdiction of a federal agency when at the time defendants made a false statement in a loan application they had no intent or obligation to obtain a federally insured loan).

tor which is solely a basis for Federal jurisdiction, for venue, or for grading. The rule is consistent with the trend of recent decisions interpreting existing criminal statutes, including both substantive offenses and conspiracy, as not requiring proof of *scienter* by a defendant as to the jurisdictional element contained therein." S. Rep. 97-307, 97th Cong., 1st Sess. 73 (1981) (footnote omitted).[28] See also *Model Penal Code* § 1.13(10) (Proposed Official Draft 1962) ("material elements" for culpability purposes exclude jurisdiction and grading).

In the great majority of cases, the courts have held that, where a federal statute is silent with respect to any requirement that a defendant be aware of jurisdictional facts, proof of such knowledge is not an element of the government's case. In addition to *Feola*, see, *e.g.*, *Barnes* v. *United States*, 412 U.S. 837, 847 (1973) (knowledge that checks were stolen from the mails, as opposed to knowledge that they were stolen, not required under 18 U.S.C. 1708); *United States* v. *Hamilton*, No. 83-2052 (7th Cir. Jan. 13, 1984), slip op. 5-6 (knowledge of federal interest in converted funds not required under 18 U.S.C. 665); *United States* v. *Bankston*, 603 F.2d 528, 532 (5th Cir. 1979) (knowledge that individual is crossing state lines not required under federal kidnapping statute, 18 U.S.C. 1201); *United States* v. *Peskin*, 527 F.2d 71, 78 (7th Cir. 1975), cert. denied, 429 U.S. 818 (1976) (knowledge of use of interstate facilities not required under Travel Act, 18 U.S.C. 1952); *United States* v. *Hobson*, 519 F.2d 765, 769 (9th Cir.), cert. denied, 423 U.S. 931 (1975) (knowledge that the escapee defendants aided had committed a federal crime and escaped

[28] The Committee cited as examples *United States* v. *Feola*, *supra*; *Barnes* v. *United States*, 412 U.S. 837, 847 (1973); and *United States* v. *LeFaivre*, 507 F.2d 1288, 1297 n.14 (4th Cir. 1974), cert. denied, 420 U.S. 1004 (1975).

from federal prison not required to establish that they were accessories after the fact under 18 U.S.C. 3); *United States* v. *Horton*, 503 F.2d 810, 813 (7th Cir. 1974) (knowledge that firearms had traveled in interstate commerce not required under 18 U.S.C. App. 1202(a)(1)); *United States* v. *White*, 451 F.2d 559 (6th Cir. 1971), cert. denied, 405 U.S. 1071 (1972) (knowledge that goods crossed state lines not required under 18 U.S.C. 2314); *United States* v. *Jennings*, 471 F.2d 1310, 1312 (2d Cir.), cert. denied, 411 U.S. 935 (1973) (knowledge that official bribed is a federal official not required under 18 U.S.C. 201(b)(1)); *United States* v. *Howey*, 427 F.2d 1017, 1018 (9th Cir. 1970) (knowledge of federal ownership of property not required under 18 U.S.C. 641); *United States* v. *Blassingame*, 427 F.2d 329, 330-331 (2d Cir. 1970), cert. denied, 402 U.S. 945 (1971) (knowledge that interstate communication is used not required under wire fraud statute, 18 U.S.C. 1343);[29] *United States*

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[29] *United States* v. *Blassingame* provides a good example of the reasoning courts employ in concluding that the government need not prove a defendant's knowledge of facts supporting federal jurisdiction (427 F.2d at 330):

> The statute does not condition guilt upon knowledge that interstate communication is used. The use of interstate communication is logically no part of the crime itself. It is included in the statute merely as a ground for federal jurisdiction. The essence of the crime is the fraudulent scheme itself. Nothing is added to the guilt of the violator of the statute by reason of his having used an interstate telephone to further his scheme. There is consequently no reason at all why guilt under the statute should hinge upon knowledge that interstate communication is used. If the wire employed is an interstate wire the requirements for federal jurisdiction are satisfied. It is wholly irrelevant to any purpose of the statute that the perpetrator of the fraud knows about the use of interstate communication.

v. *Licausi*, 413 F.2d 1118, 1121 (5th Cir. 1969), cert. denied, 396 U.S. 1006 (1970) (knowledge that money was stolen from federally insured bank not required under bank robbery statute, 18 U.S.C. 2113(c)); *Overton* v. *United States*, 405 F.2d 168, 169 (5th Cir. 1968) (knowledge of interstate transportation of stolen vehicle not required under 18 U.S.C. 2313); *Bibbins* v. *United States*, 400 F.2d 544 (9th Cir. 1968) (knowledge that automobile would cross state lines not required under 18 U.S.C. 2312); *United States* v. *Allegretti*, 340 F.2d 243, 247, modified on other grounds, 340 F.2d 254 (7th Cir. 1964), cert. denied, 381 U.S. 911 (1965) (knowledge that goods are stolen from an interstate shipment not required under 18 U.S.C. 659).[30]

There is no reason to assume that Congress intended in the case of Section 1001 to depart from the normal practice of using jurisdictional language merely for the purpose of providing the basis for federal court jurisdiction, not also as a supplement to the culpability element. Consideration of the purposes generally

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[30] Cf. *United States* v. *Grissom*, 645 F.2d 461 (5th Cir. 1981) (intent to defraud government in connection with concealment of mortgaged property required under 18 U.S.C. 658). The court in *Grissom* rested its reading of Section 658 on its perception that the language of the statute was ambiguous and that construction of the statute to extend to a sharecropper's attempt to defraud his landlord would upset the federal-state balance in regulation of the sharecropper-landlord relationship. See *United States* v. *Bass*, 404 U.S. 336, 349-350 (1971). The court in *Grissom* expressly distinguished 18 U.S.C. 658 from 18 U.S.C. 1001, noting, inter alia, that Section 1001 does not refer to an "intent to defraud" and that the interest of the federal government under Section 1001 does not turn on whether the intended victim of the fraud is a federal body.

served by culpability requirements and by jurisdictional language merely confirms what is apparent from the language of Section 1001 and its legislative purpose: a prosecutor who succeeds in proving the normal elements of a Section 1001 offense, as did the prosecutor in this case, is not required to go further and prove beyond a reasonable doubt the additional fact that the defendant knew his false statement was made in a matter within federal agency jurisdiction.[31]

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[31] If the Court should nevertheless conclude that knowledge of federal involvement is an element of a Section 1001 offense, it should reject the court of appeals' subjective standard for proof of knowledge. Requiring proof beyond a reasonable doubt of actual subjective knowledge places a particularly difficult burden of proof on the prosecution, since it will often be impossible for the prosecution to produce direct evidence of whether a defendant was aware of federal agency involvement in the face of the defendant's own self-serving testimony. Thus, the court of appeals' standard is clearly inconsistent with Congress's broad purpose of protecting federal functions. See pages 20-23, *supra*. At the very least, the prosecution should be permitted to prove that a defendant acted recklessly, in that he knew or should have known that his false statement was in a matter within federal agency jurisdiction. That test corresponds to the jury instruction given in this case. See J.A. 25.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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JANUARY 1984

☆ U. S. GOVERNMENT PRINTING OFFICE: 1984 431367 245

Office - Supreme Court, U.S.
FILED
FEB 21 1984

No. 83-346

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA,

Petitioner,

v.

ESMAIL YERMIAN,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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SUMMARY OF ARGUMENT

Knowledge of federal jurisdiction is an essential element of 18 U.S.C. § 1001 when the statute is interpreted in light of its legislative history and basic principles governing the operation of criminal statutes.

Section 1001 proscribes false as well as fraudulent statements. The importance of this fact is that the mere making of a false statement to a private party, without the intent to defraud, is not in all instances an act proscribed by state criminal law. In these instances, knowledge of federal involvement is the sole factor which converts an otherwise innocent statement into a criminal act. Since an individual making such a statement will have received no prior notice as to the criminality of his conduct, it is essential that such an individual's liability hinge on whether he knew his statement would reach a federal agency.

Because of careless drafting in the statute's 1948 amendment the scienter requirements of the statute are ambiguously stated. A question is therefore raised as to the statute's intended operation. However, the legislative history, when considered in its entirety, supports Respondent's argument that Congress intended to include knowledge of federal jurisdiction as an element of the offense.

Section 1001's original antecedent was the Act of March 2, 1863, ch. 67, 12 Stat. 696. The Act of 1863 was enacted solely to punish military personnel who knowingly presented false monetary claims directly to the United States.

Between 1863 and 1948, Congress amended the antecedents to section 1001 to respond to specific inherent limitations in the original statute. Thus, by 1934, the statute had been selectively broadened so that it would encompass false claims made directly to the United States even if made by non-military personnel. In 1934, it was again necessary to amend the statute to clarify that it encompassed non-monetary false claims and false statements. The 1934 amendment was drafted primarily in response to *United States* v. *Cohn*, 270 U.S. 339 (1926).

While Congress intended to protect New Deal programs from fraud, the Government's contention that Congress intended to punish persons unaware of federal involvement is not supported by the legislative history or the remarks of the President.

The legislation originally submitted to Congress in 1934 proscribed the knowing and willful presentation of false papers. Congress considered this bill, but adopted in lieu thereof legislation that incorporated the requirement of an "intent to defraud the government." It became necessary, however, to eliminate this language and substitute in its place "in any matter within the jurisdiction . . . of the United States" in the final 1934 enactment, so that the statute would reach false statements made to the government which defrauded a third party. It was for this reason, and not because Congress intended to eliminate knowledge of federal involvement from the culpability requirement of the statute, that the intent to defraud the United States language was deleted. The new phrase did not, however, signify a substantive departure from the earlier version of the 1934 bill which had been vetoed. The Court concluded that the new phrase "was inserted simply to compensate for the deleted language as to purpose—to indicate that not all falsifications, but only those made to government organs would be reached." *United States* v. *Bramblett*, 348 U.S. 503, 508 (1955).

While the 1934 statute included knowledge of federal involvement as an element of the offense, in 1948 the phrase "in any matter" was transposed to the beginning of the statute, to precede "knowingly and willfully." The 1948 revision thus created an ambiguity as to whether "knowingly and willfully" was still intended to modify the jurisdictional phrase which now preceded those words. The Court subsequently clarified that the 1948 amendment was not substantive. *United States* v. *Bramblett*, 348 U.S. at 508. Most courts continued to apply section 1001 in a manner consistent with the principle that knowledge of federal involvement was an element of the crime.

Even if the legislative history were not conclusive as to whether knowledge of federal jurisdiction is an element of the offense, application of the principle of lenity is required and yields a result favorable to the Respondent, since an ambiguity as to what Congress made a crime must be construed in favor of the defendant. *Ladner* v. *United States*, 358 U.S. 169 (1957).

Congress enacted section 1001 to proscribe the making of false statements when an individual knew of federal involvement. The purpose of the statute was to deter such behavior and this purpose cannot be served if knowledge of federal involvement is omitted from the elements defining the offense.

While Congress intended the statute to apply to a false statement made to an intermediary if the defendant knew of its ultimate destination, Congress never intended the statute to reach false statements submitted by persons unaware of the federal interest in the matter. The three courts of appeals which held to the contrary improperly relied on *United States* v. *Feola*, 420 U.S. 671 (1975), which construed the elements of an entirely different statute.

In *Feola*, the Court construed the scienter requirements of 18 U.S.C. § 111 (the federal assault statute) and held that knowledge that the victim was a *federal* officer is not an element of the offense. Because assault is always conduct which is criminal, federal involvement merely provides the jurisdictional basis for prosecution in another forum. *Feola* supports the proposition that when a statute merely provides a federal forum for prosecution of conduct that is already subject to criminal sanction under state law, it is not necessary for knowledge of federal jurisdiction to be an element of the crime.

The *Feola* decision provides a basis for understanding why section 1001, unlike section 111, must contain knowledge of federal involvement as an element of the crime. Unlike the conduct proscribed in section 111 (assault), conduct proscribed in section 1001 (false statements) is not always criminal or subject to state prosecution. For this reason, a scienter requirement as to federal involvement is necessary to prevent

section 1001 from creating what the Court in *Feola* characterized as a "snare for the unsuspecting." 420 U.S. at 685. The three courts of appeals that held contrary to the Ninth Circuit in the instant case erroneously concluded that the intent element of section 1001 was identical to that of section 111, merely because the two statutes shared the common *purpose* of protecting the integrity of federal functions. This reasoning failed to take into account that two criminal statutes may share a broad common purpose without being identical as to their scienter requirements.

The interpretation of the Ninth Circuit will not significantly hinder prosecution under section 1001. A survey of case law demonstrates that a defense of "no knowledge" of federal involvement is rarely asserted. In most instances the facts will overwhelmingly reveal that the defendant knew that the ultimate destination of his statement was a federal agency, even if his statement was made to an intermediary such as a state welfare agency or defense subcontractor. Thus, even in the few cases where defendants assert a "no knowledge" defense, the government can easily refute such a claim, due to the context in which the false statement is made. Indeed, a clear written warning regarding federal involvement placed on relevant forms, as was supplied in the instant case, will assure the government of adequate protection against a defendant's claim to a jury of no knowledge of federal jurisdiction. Merely because prosecution under section 1001 may, in some cases, be more difficult, does not justify eliminating the requirement that the defendant must be aware of federal involvement, nor does it justify ignoring Congressional intent.

The Government urges the Court to interpret section 1001 in light of recent trends in statutory drafting, in which the basis for exercising federal jurisdiction is separated from the basic criminal conduct as an element of the offense. In making this argument, the Government fails to acknowledge that at the time section 1001 was enacted, the mode utilized in drafting criminal statutes was to state the basis for exercising federal jurisdiction *together* with the criminal conduct as an element of

the offense. Therefore, Respondent's interpretation of section 1001 comports with the method of drafting that was employed when Congress drafted section 1001 and its antecedents.

The Government's interpretation is a result-oriented one that fails to take into account that section 1001, as drafted in 1948, was not intended to be a panacea for combatting today's complex social issues. The examples cited by the Government of how a false statement made in a matter of national security or nuclear energy could have serious effects upon the operations of Government raise obviously legitimate concerns. If section 1001's usefulness is somewhat lessened by an adoption of Respondent's interpretation, it is simply because the statute as envisioned at the time of its 1948 enactment was a statute of more modest applicability. If Respondent's interpretation of section 1001 is accepted Congress will, if it so desires, act to draft the legislation sought by the Government in it's brief.

The district court's instruction to the jury with respect to the element of knowledge of federal jurisdiction was insufficient. The district court instructed the jury that it could convict Respondent if it found that he "knew or should have known" of federal agency involvement. This instruction was insufficient because it allowed the jury to convict on an objective, rather than a subjective standard of knowledge. The jury instruction failed to meet even the requirements of the "recklessness" standard that the Government would urge the Court to adopt.

ARGUMENT

I. PROOF THAT A DEFENDANT KNEW HIS FALSE STATEMENT WAS IN A MATTER WITHIN THE JURISDICTION OF THE UNITED STATES IS REQUIRED UNDER 18 U.S.C. § 1001

A. 18 U.S.C. § 1001 Is Ambiguous On Its Face With Respect To Its Scienter Requirements

18 U.S.C. § 1001 provides in pertinent part: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully . . . makes any

false, fictitious or fraudulent statements or representations, . . . shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Common sense analysis of the present statutory language leads to the conclusion that section 1001 is ambiguous on its face:

> While the phrase 'knowingly and willfully' clearly provides that specific intent is a crucial element of the offense, neither the grammatical construction nor the punctuation of the statute indicates whether the 'knowingly and willfully' phrase modifies only the phrase 'makes any false, fictitious or fraudulent statements' *or* the broader phrase 'in any matter within the jurisdiction of any department or agency of the United States . . . makes any false, fictitious or fraudulent statements.'

United States v. *Yermian*, 708 F.2d 365, 368 (9th Cir. 1983).

The Fifth Circuit also commented upon the ambiguous language of the statute, stating that while it is clear that the government must prove that the defendant made a false statement with intent to deceive, "it is quite unclear, however, whether the defendant must also know that his statement was material, i.e., that it was capable of influencing a federal agency. The statute can be read to require knowledge of materiality, and hence knowledge of falsity alone, but it can also be read to require knowledge of federal involvement." *United States* v. *Baker*, 626 F.2d 512, 515 (5th Cir. 1980).

Because the language of the statute is equally susceptible of either interpretation, extrinsic sources including legislative history must be consulted to determine whether they provide additional evidence of Congressional intent. *See Allen* v. *State Board of Elections*, 393 U.S. 544 (1969).

B. The Legislative History Of Section 1001 And Its Antecedents Establish That A Defendant's Knowledge Of Federal Involvement Has Always Been An Element Of The Offense

Definitive sources of legislative history for section 1001 consist of the legislative comments made before and during its enactments and subsequent amendments, as well as cases of the Court discussing the statute's history. Analysis of the legislative history makes clear that Congress never intended to eliminate knowledge of federal jurisdiction as an element of the crime.

Section 1001 has its historical origins in an 1863 statute enacted solely to punish military personnel who submitted false monetary claims to the United States government. The Act of March 2, 1863, ch. 67, 12 Stat. 696 (hereafter cited as "Act of 1863") made it a criminal offense for:

> any person *in the land or naval forces of the United States* . . . [to] make or cause to be made, or present or cause to be presented for payment or approval to or by any person or officer in the civil or military service of the United States, *any claim upon or against the Government of the United States*, or any department or officer thereof, knowing such claim to be false, fictitious or fraudulent. . . .

(Emphasis added.)

Furthermore, the Act of 1863 subjected to criminal prosecution

> any person *in such forces* or service who shall *for the purpose of obtaining*, or aiding in obtaining, *the approval or payment of such claim*, make, use, or cause to be made or used, any false bill, receipt, voucher, entry, roll, account, claim, statement, certificate, affidavit, or deposition, knowing the same to contain *any false or fraudulent statement* or entry. . . .

(Emphasis added.)

As evidenced by its clear language and its title ("An Act to Prevent Frauds Upon the Government of the United States"),

the Act of 1863 was intended to apply solely in circumstances where a member of the military knowingly dealt directly with the United States government.

In *United States* v. *Bramblett*, 348 U.S. 503 (1955), the Court noted that the prohibition of the 1863 statute was broad, but "limited to military personnel." *Id.* at 505. Implicit in the statute's premise was the military claimant's knowledge that he was dealing with the government.

In 1873, Congress responded to the problem that the Act of 1863 reached only false claims made by members of the military by amending the statute. "Under the codification of December 1, 1873, approved June 22, 1874, R.S. § 5438, the statute was extended to cover 'every person'—not merely military personnel." *United States* v. *Bramblett*, 348 U.S. at 506 n.2. The revised statute imposed liability upon civilians who submitted false claims directly to the United States.

In 1908 a subsequent amendment recodified R.S. § 5438 as section 35 of the Criminal Code and simply altered the statutory penalties. 348 U.S. at 506 n.2.

In 1918 Congress redrafted the statute (Act of October 23, 1918, ch. 194, 40 Stat. 1015)[1] so that the false claims provision covered false statements to corporations in which the United States held stock, as well as false statements made directly to

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[1] The 1918 statute read in pertinent part: "Whoever shall make or cause to be made or present or cause to be presented, for payment or approval to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, *any claim upon or against the Government of the United States*, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, *knowing such claim to be false, fictitious, or fraudulent;* or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose *and with the intent of cheating and swindling or defrauding the Government of the United States, or any department*

the government without the presentation of a monetary claim. *See United States* v. *Cohn*, 270 U.S. 339, 340 (1926). In *Cohn*, the defendant made a false statement to a United States Custom Inspector, not for the purpose of defrauding the United States, but for the purpose of defrauding a third party. Since there was no import duty owing to the United States, there was no "claim" against or defrauding of the government. Therefore, the Court held that section 35 had not been violated. The Court's ruling in *Cohn* rendered section 35 inapplicable to situations where there was no monetary claim presented to the government. The *Cohn* Court construed the 1918 statute as requiring that the defendant have the specific intent to defraud the government:

> The section punishes the concealment or misrepresentation of material facts whenever the defendant's purpose is to obtain the payment or approval of a claim, or to cheat and swindle or defraud the United States or any department thereof.

Id. at 340.

Construing the 1918 Act, the *Cohn* Court held that the statute would not apply when a defendant made a false statement to the United States for the purpose of obtaining a claim from a third party. Thus, after the *Cohn* decision, a defendant must have intended specifically to defraud the government to violate the statute. The mere making of a false statement to the Government was insufficient to invoke the statute.

Legislative and executive dissatisfaction with the fact that *Cohn* construed the 1918 statute as not applying to non-

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thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations . . . *shall be fined not more than $10,000 or imprisoned not more than ten years, or both.*" (Emphasis added.)

monetary claims,[2] prompted the 1934 amendment of section 35, which eliminated the requirement of a monetary claim against the United States. The 1934 statute employed broader language prohibiting the making of a greater variety of false or fraudulent statements "in any matter within the jurisdiction of any department or agency of the United States." Act of June 18, 1934, ch. 587, 48 Stat. 996. *See United States* v. *Bramblett*, 348 U.S. at 507 n.4; *United States* v. *Mellon*, 96 F.2d 462, 463 (2d Cir.), *cert. denied*, 304 U.S. 586 (1938). *See also*, *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941); *United States* v. *Lewis*, 587 F.2d 854, 856 (6th Cir. 1978). The Government suggests that this phraseology indicates that the "in any matter" language was no longer part of the culpability requirement. However, this contention has no support in the statute's legislative history.

The legislative process surrounding the adoption of the 1934 version of the statute instead indicates that Congress intended knowledge of federal involvement to remain an element of the offense. In 1934, the Secretary of the Interior, attempting to curb non-monetary frauds against the government, introduced S. 2686 in the House and Senate Judiciary Committees. S. REP. No. 288, 73rd Cong., 2d Sess. 2 (1934).[3] The House Judiciary Committee considered the legislation submitted by

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[2] *United States* v. *Bramblett*, 348 U.S. at 507.

[3] The Secretary's letter to the Senate Judiciary Committee read in pertinent part as follows: "A large number of cases are arising constantly in the enforcement of the laws relating to the Interior Department; the transaction of business in connection with the Public Works Administration; in violations of the Code of Fair Competition for the Petroleum Industry; and enforcement of regulations under section 9(c) of the National Industrial Recovery Act of June 16, 1933, which are not susceptible of successful prosecution on charges of perjury, and there is no law at present under which prosecution may be secured for the *presentation* of false papers." 78 CONG. REC. at 2858 (emphasis added).

the Secretary of the Interior but amended it so that it *specifically required* an intent to defraud the *United States government*. H.R. 8046, significantly entitled "Presentation of False Instruments with Intent to Defraud the United States," was accompanied by House Report No. 829, which commented that

> the rights of the accused are protected by the provision that the act must be committed willfully and knowingly *and with intent to defraud the United States*. It is essential to the public interest that the Government protect itself against acts committed under such circumstances.

78 CONG. REC. 9776 (1934) (emphasis added).

The Senate Judiciary Committee preferred the House version of the bill to that proposed by the Secretary of the Interior, and so adopted it. The Senate preferred the House version of the bill because it had been amended to require a specific intent to defraud the Government. 78 CONG. REC. 5746 (1934). Thus, the bill was directed to those persons who knowingly directed their fraudulent acts at the government. However, H.R. 8046 did not become the final version of the legislation.

The problem with the language of H.R. 8046, was that it would not apply where false statements were made to the United States in the course of perpetrating a fraud against a third party. Additionally, President Roosevelt was dissatisfied with the legislation because it effectively reduced the penalties already provided for in existing law. President Roosevelt, in explaining the Presidential veto, stated:

> The bill is objectionable in that its result would be to reduce the punishment for certain frauds against the United States.

78 CONG. REC. 6778-79 (1934).

Quickly following the Presidential veto, the Senate Judiciary Committee presented amendments to another bill, the purpose of which was to extend the 1918 Act to cover injury to United States property. The amendments proposed by the Senate served to broaden the scope of the 1918 Act by proscribing the presentation of false papers to a federal agency, even

where there was no monetary loss to the government, without lessening the penalties provided in the 1918 Act. *United States* v. *Yermian*, 708 F.2d 365, 370 (9th Cir. 1983).

H.R. 8912, the bill finally enacted in 1934, retained the false claims section from the 1918 legislation. The new false statements section employed the phrase "in any matter within the jurisdiction of any department or agency of the United States" for the first time. While it is true that the 1934 legislation as finally adopted no longer contained language of specific intent to defraud the government, the Court has indicated that the jurisdictional language was intended to serve the same purpose. *United States* v. *Bramblett*, 348 U.S. at 507-08.

Thus, while it is noteworthy that this new phrase was adopted, the legislative history does not support the Government's interpretation that knowledge of federal jurisdiction was meant to be deleted from the culpability requirement of the statute. Rather, substitution of the "in any matter" language in lieu of a specific intent to defraud the United States was necessary because the "intent to defraud the United States" phrase would not permit prosecution in a *Cohn*-type situation where false statements were made to the government in order to effect a fraud on a third party.

Yet, in spite of the clear focus of the 1934 amendment, the Government has argued, without citation, that the revision was adopted so as to encompass "statements that were not made directly to the government and whose makers might not be aware of federal involvement." (Brief for Petitioner at 30.) No support for this assertion can be found in either the legislative history, the remarks of President Roosevelt, or the decisions of the Court. Congress, in amending the statute after *Cohn*, had no reason or intention to extend the statute to situations where an individual did not know of federal involvement.

Had H.R. 8912, as enacted in 1934, been wholly new legislation, then the Government's contention that the statute was enacted to reach makers of statements who were not aware of

federal involvement might have some force. It must be remembered, however, that H.R. 8912 was simply the recodification of an earlier statute originally drafted for the sole purpose of prosecuting claimants who dealt directly with and intended to defraud the United States. Where, as here, the legislative history traces the statute from a clear and unambiguous source and shows no intent to deviate from the source statute's original purpose, the Government's position lacks support.

Turning to the case law, the Government has argued that the 1934 amendment broadened the earlier statute in order to reach false statements made to intermediaries, even where the maker of the statement was unaware of federal involvement. The Government cites *United States* v. *Bramblett*, 348 U.S. at 507, where the Court observed that after the 1934 amendment "a greater variety of false statements were meant to be included in the statute's coverage." As previously discussed, the Government fails to point out that the Court's language referred to the problem presented by *United States* v. *Cohn*, 270 U.S. 339 (1926), namely, where a defendant presented a false statement rather than a false claim to the Government.

It was dissatisfaction with this narrow interpretation of section 35 which led to the broader language prohibiting the making of false or fraudulent statements "in any matter within the jurisdiction of any department or agency of the United States." Act of June 18, 1934, ch. 587, 48 Stat. 996 (1934). *See United States* v. *Lewis*, 587 F.2d 854, 856 (6th Cir. 1978) (per curiam); *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941); *United States* v. *Bramblett*, 348 U.S. at 507 n.4.

The Court in *Bramblett* recognized that the purpose of the 1934 amendment was to close the "loophole" created by *Cohn* with respect to non-monetary claims. This is what the Court was referring to when it said "a greater variety of false statements were meant to be included." *Id.* at 507. The Court's comment cannot be read as being directed to the issue of whether section 35 applies where a false statement was made to a third party with no knowledge of federal involvement.

That issue was never before the *Cohn* Court. Instead the new language is properly read as a broadening of the *type* of statement proscribed, so far as its purpose, and a contrary suggestion was properly rejected in *United States* v. *Gilliland*, 312 U.S. 86 (1941). But to read this change, as has the Government, as also eliminating any requirement that the accused know the *destination* of his statement (a requirement clearly encompassed in the earlier act's prohibition of "claims against" or "defrauding" of the United States) is to ignore the purpose of the amendment, which was to ensure that any false statement knowingly made to the United States be prohibited, even if it does not involve a "claim" or "fraud."

Furthermore, *Bramblett* indicates that in spite of the substitution of the "in any matter language" in lieu of the previous requirement of a specific intent to defraud the United States, Congress retained knowledge of federal involvement as an element of the offense after 1934. Discussing the 1934 amendment, the Court said: "Apparently the italicized phrase was inserted simply to compensate for the deleted language as to purpose—to indicate that not all falsifications but only those made to government organs were reached." 348 U.S. at 508. What *Bramblett* makes clear is that the scope of the statute was at least broad enough to reach statements made to the legislative and judicial, as well as executive branches of government. *Id.* at 506.

Moreover, the organization of the statute after the 1934 amendment also indicates that knowledge of federal involvement was intended to remain an element of the offense. It read in pertinent part:

> Whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation

> in which the United States of America is a stockholder . . . shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

Act of June 18, 1934, ch. 587, 48 Stat. 996.

Thus, in the 1934 amendment, both the proscribed conduct ("falsify . . . by any trick") and the jurisdictional language ("in any matter within the jurisdiction") followed the modifiers "knowingly and willfully." A common sense interpretation of the language leads to the conclusion that the modifiers "knowingly and willfully" referred to both elements of the offense.

The 1948 revision and recodification brought the statute to its present form; the false claims section became section 287 and the false statement provision became section 1001. The Court characterized the 1948 amendment simply as incorporating "housekeeping changes in language which are of no particular significance." *United States* v. *Bramblett*, 348 U.S. at 508. The Court went on to add: "there is no indication that the [1948] revision was intended to work any substantive change." *Id.*

However, because of the organization of the language in the 1948 statute, an ambiguity was created which gives rise to the present controversy. Because the jurisdictional phrase was transposed to *precede* the modifier "knowingly", the Government suggests that Congress intentionally deleted the jurisdictional knowledge element from the final version of section 1001. However, as *Bramblett* makes clear, the 1948 revision was not meant to be substantive. Therefore, it appears that the 1948 amendment was not prompted by a desire on the part of the legislature to clarify whether knowledge of federal jurisdiction was an element of the statute.

The 1948 amendment was a minor part of a major redrafting in 1948 of the entire Criminal Code. The comments accompanying the recodification of the entire Code indicate that revisions were made for stylistic reasons only. *See* H.R. REP. No. 304 at 2441, 80th Cong., 1st Sess. 8 (1947). Therefore, the transposition of the jurisdictional element to the beginning of the statute (the effect of which was to render the statute ambiguous on its

face) appears to be no more than an inadvertent result of sloppy drafting. It is not difficult to envision how such negligent draftsmanship could have occurred given the broad overhaul and modernization of the entire Criminal Code.[4]

The foregoing discussion comprises the legislative history of section 1001. This history convincingly demonstrates that Congress did not intend section 1001 or its antecedent statutes to apply in circumstances where an individual made statements to a third party who could fortuitously convert the person's conduct into a criminal offense by transmitting the statement to the federal government.

The cumulative legislative history instead reveals that statutory amendments were motivated by concerns unrelated to the question of jurisdictional knowledge: that the statute reach civilian claims[5]; that it impose penalties commensurate with those imposed by its predecessor statute[6]; and that the "department or agency" language include false statements made to the judicial and legislative branches.[7] The statute was never broadened to apply to situations where the defendant would be unaware of federal involvement.

C. Even If The Legislative History Of Section 1001 Is Not Conclusive, Knowledge Of Federal Jurisdiction Is A Requisite Element When The Principle Of Lenity Is Applied

Additional support for the conclusion that section 1001 should be interpreted to require knowledge of federal involvement is derived from general rules governing interpretation of criminal statutes. Even if the Court concludes that the legisla-

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[4] The overall purpose of the 1948 Code revision was to delete verbose phrases, redundant language, and archaic expressions. H.R. REP. No. 304, 80th Cong., 1st Sess. 8 (1947).

[5] *United States* v. *Bramblett*, 348 U.S. at 506 n.2. (1954).

[6] *United States* v. *Gilliland*, 312 U.S. at 94.

[7] *United States* v. *Bramblett*, *supra*, at 507.

tive history of section 1001 does not lend itself to a definitive interpretation, the policy of lenity requires that an ambiguity be resolved in favor of the Respondent. This policy was clearly set forth by the Court in *Ladner* v. *United States*, 358 U.S. 169 (1957):

> "[W]hen choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." . . .
> . . . "When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity."

Id. at 177-78 (citations omitted).

At issue in *Ladner* was whether, in an action arising under the federal assault statute, a single assault affecting two officers should constitute two offenses. The Court found that neither the wording of the statute nor its legislative history pointed clearly toward one interpretation. Confronted with this ambiguity, the Court applied the policy of lenity and construed the statute in the manner least punitive to the defendant.

This policy has been reiterated frequently. *See Bell* v. *United States*, 349 U.S. 81 (1955), and citations therein; *United States* v. *Bass*, 404 U.S. 336 (1971) (legislation and language of statute ambiguous, lenity applied). Therefore, if the unintended ambiguity in the 1948 amendment creates doubts about Congressional intent, then the principle of lenity should be applied in the manner least punitive to the Respondent.

D. The Purpose Of Section 1001 Would Not Be Frustrated By A Finding That Knowledge Of Federal Jurisdiction Is An Element Of The Crime

1. As evidenced by the foregoing survey of the legislative history, Congressional amendments were never prompted by a desire to punish persons who had no knowledge of federal involvement. Comments made by Congress and the Court concerning the statute's breadth must be interpreted with this

in mind. The Governnment's assertion that the broad legislative purpose cannot be served if the jurisdictional knowledge element is retained is erroneous. Once one has thoroughly analyzed the legislative history of section 1001 and its predecessor statutes, it becomes clear that while each legislative amendment selectively extended its scope, at no time did Congress intend to eliminate knowledge of federal involvement as an element of the offense.

Although it is true that the 1934 amendment coincided with the inauguration of some of President Roosevelt's New Deal programs, it does not necessarily follow, as the Government argues, that the amendment "unquestionably was designed to broaden the statute in response to the federal government's increasing needs for protection from fraud." (Brief for Petitioner at 25). Nothing in any of the legislative history supports the Government's claim that Congress found it necessary to eliminate the jurisdictional knowledge requirement in order to protect new types of federal programs. While Congress did articulate its intent that newly-created federal programs be fully protected from fraud, there is no evidence that Congress in 1934 contemplated a situation where an individual had no knowledge of federal involvement but dealt with a third party who transmitted his statement to the government.

Significantly, not until twenty-five years after the 1934 amendment did appellate cases involving false statements made to intermediaries arise with any regularity.[8] It is appar-

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[8] The courts were faithful to the spirit of the Congressional intent when holding that a statement need not be made directly to the federal Government to be made "in any matter within the jurisdiction of a United States Department or Agency." *See, e.g., United States* v. *Hooper*, 596 F.2d 219 (9th Cir. 1979); *United States* v. *Candella*, 487 F.2d 1223 (2d Cir. 1973), *cert. denied*, 415 U.S. 977 (1974); *United States* v. *Matanky*, 482 F.2d 1319 (9th Cir.), *cert. denied*, 414 U.S. 1039 (1973); *United States* v. *Waters*, 457 F.2d 805 (3d Cir. 1972) (per curiam); *United States* v. *Kraude*, 467 F.2d 37 (9th Cir.), *cert. denied*, 409 U.S. 1076 (1972). In these later decisions liability was

ent that Congress had no reason to anticipate such situations in 1934, let alone reason to consider the question that would be presented if an individual did not know his statement was made in a matter within the jurisdiction of the United States.

Furthermore, the Government has omitted discussion of an additional important purpose of any criminal statute, namely, deterrence of criminal conduct. A statute which operates to punish a defendant who is unaware that he is breaking the law cannot be successful in deterring him from his course of conduct.

2. In light of the substantial legislative history and case law supporting the argument that knowledge of federal involvement is an element of section 1001, the reasoning of the courts holding to the contrary must be seriously questioned. It is submitted that the cases of *United States* v. *Stanford*, 589 F.2d 285 (7th Cir. 1978), *cert. denied*, 440 U.S. 983 (1979), *United States* v. *Lewis*, 587 F.2d 854 (6th Cir. 1978) (per curiam), and *United States* v. *Baker*, 626 F.2d 512 (5th Cir. 1980), were wrongly decided.

First of all, in considering whether a section 1001 violation required knowledge of federal involvement, the *Baker*, *Stanford* and *Lewis* courts were not presented with facts causing them to consider the implications of their holdings for future false statement cases. In each of the three cases, the defendants had engaged in conduct which was criminal initially, even absent transmission of their statements to the federal government.

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properly imposed where a defendant dealt with an intermediary because the facts evidenced that he knew his statement would ultimately reach the United States government. As the court in *United States* v. *Lewis*, 587 F.2d 854 (6th Cir. 1978) noted, "most cases in which Section 1001 has been applied have emphasized, one way or another, the defendant's awareness of federal involvement." *Id.* at 857.

In *Stanford* and *Lewis*, the defendants entered false information on State Public Assistance agency forms in order to obtain financial assistance from the Aid to Families With Dependent Children (A.F.D.C.) program. In *Baker*, the defendant falsified time sheets to her state employer who then sought reimbursement from the federal government. In each of these cases, the defendant's conduct was fraudulent; therefore, notice was provided by state law.[9] For this reason, in deciding that section 1001 did not require knowledge of federal involvement, these courts had no cause to consider the effect of such a holding where the defendant's false statement was not initially subject to criminal sanctions.

Consider the following problem:

Suppose X was approached by his neighbor who, in the course of a casual conversation, inquired whether X had ever been fired from a job. Further, suppose X lied to his neighbor because he did not want to reveal that he, in fact, had been discharged from prior employment. Certainly no argument could be made that X's lie, absent fraudulent intent, was a crime. Yet, if by chance the neighbor was approached by a representative of a federal agency which had already begun performing a security clearance on X, and the neighbor repeated the lie, X would become subject to prosecution under

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[9] Respondent Yermian concedes (as he did in courts below) that his conduct in the instant case may well be considered fraudulent, insofar as he attempted to obtain valuable employment by using false statements. Nevertheless, it is Respondent's contention that an interpretation of section 1001 which does not require knowledge of federal involvement may operate to punish persons who act without fraudulent intent. In determining Congressional intent, the issue is not whether some defendants in section 1001 cases may act fraudulently, but whether the Government's interpretation will be so broad as to reach some individuals whose statements are not worthy of criminal prosecution.

section 1001, if as the Government claims, the statute does not require knowledge of federal involvement.[10]

The *Baker*, *Lewis* and *Stanford* courts had no reason to consider the problem presented by the foregoing hypothetical, since each of the defendants engaged in behavior which was fraudulent, even absent federal involvement. The facts presented to each of the courts did not lend themselves to an examination of the implication of holding that section 1001 required no knowledge of federal involvement if an individual made a statement which was false, but not fraudulent.

When an individual's *conduct* is in fact fraudulent it is not unfair to prosecute him federally if it turns out that his statement concerns a matter within federal jurisdiction. But a wholly different situation is presented when a defendant's statement is false but not fraudulent. In such a situation, an individual's knowledge of federal jurisdiction is critically important because it is the factor which converts his conduct into a crime. Where a statement is false but not fraudulent, knowledge of federal involvement must be an element of section 1001 if the statute is to operate fairly. Without it, the statute may be used to criminally punish a defendant who is unaware that his

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[10] This very problem was singled out for discussion in *Terry* v. *United States*, 131 F.2d 40 (8th Cir. 1942), where a defendant made a false statement to a bank which later transmitted it to the federal government. In dismissing the indictment brought under the predecessor to section 1001 the court said:

> We are of the opinion that on the charge and proof in this case it would be contrary to the legislative intent to sustain this conviction. It is clear that the Housing Administration had no cognizance of the Williams loan transaction on which the indictment rests. . . . Whether the administration would or would not obtain such cognizance depended entirely *upon the free will of other parties over whom the defendant had no control*, and it is contrary to elemental principles of the criminal law that an act which is not criminal at the time of its commission may be converted into a crime at a subsequent time by the independent action of other persons.

Id. at 44 (emphasis added).

false statement may interfere with serious federal functions, or, indeed, with any legitimate societal concern. Yet if the Government's interpretation of section 1001 is accepted, the statute can operate to penalize a defendant whose false statement is not punishable by state law or is not inherently fraudulent, and who therefore cannot reasonably be charged with notice of the wrongfulness of his act.[11]

Furthermore, these three courts concluded that knowledge of federal involvement was not an element of section 1001 because they did not rely on the legislative history to determine Congressional intent. Instead, these courts focused solely on the general Congressional purpose behind section 1001, namely "to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described." *United States* v. *Gilliland*, 312 U.S. at 93.

The *Stanford* and *Lewis* courts arrived at their incorrect interpretation of section 1001 because they improperly applied *United States* v. *Feola*, 420 U.S. 671 (1975), which construes the requirements of an entirely different statute.[12] In *Feola*, the Court held that 18 U.S.C. § 111 (the federal assault statute) did not require knowledge by an assailant that his victim was a federal officer in order for him to be subject to federal prosecution. In analyzing section 111, the *Feola* Court concluded that the Congressional purposes underlying the statute were to prevent interference with the protection of federal

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[11] While it is agreed that some false statements are covered by state law, *see, e.g.*, Cal.Pen. Code § 532 (West 1970) (false pretenses) the important point is that not *all* false statements (e.g., false statement to one's neighbor about employment history) are proscribed. In these instances, no state law provides the defendant with notice of his potential criminal liability.

[12] *United States* v. *Stanford* and *United States* v. *Lewis* rely expressly on *United States* v. *Feola*. *Baker* reaches the same conclusion, using similar reasoning, without specifically citing *Feola*.

functions as well as to insure the safety of federal officers. The *Stanford* and *Baker* courts noted that section 1001 and section 111 share a similar purpose: protection of federal functions. Distracted by this similarity, these courts failed to recognize critical differences between the two statutes.

As the Court recognized in *Feola*, assault is an act which is criminal from the outset, irrespective of whether the victim is a federal officer. Notice is, in all cases, provided by state law and the inherent wrongfulness of the act. In holding that knowledge of a victim's identity was not a necessary element of a section 111 violation, the *Feola* Court indicated that Congress drafted the assault statute to provide a federal forum for insuring that a certain class of conduct, already criminal, would be vigorously prosecuted. Therefore, observed the *Feola* Court, Congress did not intend that knowledge of the victim's identity be a prerequisite to federal criminal liability.

The Court concluded that since the very nature of an assault gives notice to an assailant that his conduct is criminal, an interpretation of section 111 which did not require knowledge of the victim's identity did not act as a "snare for the unsuspecting. . . . The situation is not one where legitimate conduct becomes unlawful solely because of the identity of the individual or agency affected." *Id.* at 685. *See also United States* v. *LeFaivre*, 507 F.2d 1288, 1297 n.14 (4th Cir. 1974), *cert. denied*, 420 U.S. 1004 (1975). The identity of the victim, then, did not make the act a crime; rather it made the crime worthy of federal prosecution. Thus, the inclusion of a jurisdictional element in the statute was merely to insure the availability of a federal forum for prosecution.[13]

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[13] The situation is comparable to a crime under 18 U.S.C. § 659 (theft of items in interstate commerce) where knowledge of the facts giving rise to federal involvement is not an element of the crime, *United States* v. *Hollinshead*, 495 F.2d 1154 (9th Cir. 1974), because the underlying conduct, theft, is already criminal and notice is therefore provided by state law. *See also* 18 U.S.C. § 2315 (receipt of

Feola made clear the distinction between conduct which is always criminal, and conduct which becomes unlawful solely because of the identity of the person or agency affected. This critical distinction was overlooked by the *Stanford* and *Lewis* courts. Instead those courts decided that the statutes shared a common purpose and therefore were identical as to their intent element. This reasoning failed to take into account an essential difference between the proscribed conduct in the two statutes. Each deals with a different type of problem. Whereas an assault is always a crime, and an assault on a federal officer may be punished in either a state or a federal forum, the making of a false statement to a private party in many instances may be non-criminal. It is not automatically subject to prosecution. Therefore, the *Stanford* and *Lewis* courts erred in relying on *Feola* when they analyzed the intent requirement of section 1001.

3. The Government contends that section 1001 should be construed to require the same elements as a number of federal statutes which do not require knowledge of federal involvement as an element of the offense. (Brief for Petitioner at 38-40). The problem with this argument is that it fails to note the critical difference between section 1001 and the other cited federal statutes.

Without exception, the proscribed conduct in the statutes cited by the Government is always criminal irrespective of its impact on federal functions. Thus, when an individual utters a stolen check, kidnaps a person, steals personal property, assists in a prison escape, or commits a fraud by wire, he "nonetheless knows from the very outset that his conduct is wrongful." *United States* v. *Feola* 420 U.S. at 685.

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stolen property in interstate commerce); 18 U.S.C. § 3 (accessory after the fact); 18 U.S.C. § 641 (theft of government property); 18 U.S.C. § 1201 (kidnapping). In none of these instances does knowledge of federal involvement transform innocent conduct into a criminal offense.

Thus, whether such an individual knows he is uttering a stolen *government* check, transporting a kidnap victim *across state lines* or is stealing *government* property, such knowledge does not determine his initial exposure to criminal prosecution in *some* forum. Even absent knowledge of federal jurisdiction, state law or the inherent wrongfulness of the act serves to alert him to the likelihood of criminal prosecution.

In contrast, consider another hypothetical situation which could arise under section 1001 if the Government's interpretation is accepted:

X is approached by a neighbor. They engage in a casual conversation and the neighbor asks him how many children he has. X tells the neighbor he has three children, knowing the statement is false. In fact, X has only two living children, but he chooses not to discuss the prior death of one child with his neighbor.

Contemporaneously, the neighbor is approached by a representative of the Aid to Families with Dependent Children program who is attempting to determine X's eligibility for benefits, which are in part determined by how many children X is supporting. In the course of this conversation, the neighbor repeats X's statement that he (X) has three children. The representative, in checking his files, has already noted that X's third child had died.

Because X legitimately chose not to fully discuss his family history with his neighbor, and because his neighbor fortuitously repeated his statement regarding three children to a government representative, X could be prosecuted under section 1001 if the Government's interpretation of section 1001 is accepted.

If knowledge of federal involvement is not an element of section 1001, then X will be liable even though he had no criminal intent, let alone notice of the wrongfulness of his act. Because section 1001 can reach such false statements as that of X, the Government's interpretation must be rejected.

4. Furthermore, the Government incorrectly states that retention of the jurisdictional knowledge element in section 1001 will make conviction impossible in many instances. As case law illustrates, the majority of cases arising under section 1001 will not lend themselves to a defense of lack of knowledge because such knowledge will be evidenced by the facts, even where the defendant dealt with an intermediary. *See, e.g., Ebeling* v. *United States*, 248 F.2d 429 (8th Cir.), *cert. denied*, 355 U.S. 907 (1957) (false invoices submitted to contractor with intent that they become a part of false cost statements submitted to the government); *United States* v. *Candella*, 487 F.2d 1223 (2d Cir. 1973), *cert. denied*, 415 U.S. 977 (1974) (false statements to New York City by mover who knew the city would use them for reimbursement by HUD); *United States* v. *Matanky*, 482 F.2d 1319 (9th Cir.), *cert. denied*, 414 U.S. 1039 (1973), and *United States* v. *Kraude*, 467 F.2d 37 (9th Cir.), *cert. denied*, 409 U.S. 1076 (1972) (false medicare claims to an insurance company acting as agent for HEW); *United States* v. *Hooper*, 596 F.2d 219 (7th Cir. 1979) (false information to University where defendant knew University would be reimbursed by HEW).

In the few cases where a defense of "no knowledge" is attempted, normally the facts will overwhelmingly contradict the defendant's claim. Therefore, in spite of the Government's assertions to the contrary, interpreting section 1001 to include a jurisdictional knowledge element will not obstruct prosecution in the vast majority of cases. The government would be well protected in most cases simply by placing a conspicuous warning regarding federal jurisdiction on agency forms. Then, a jury presented with a defendant who claims he did not see the conspicuous warning (as did Respondent in the instant case) will merely have to decide whether this is a plausible claim.

5. It is logical that section 1001 contain a knowledge requirement absent in the cited federal statutes. Safeguards absent from section 1001 are built into the other statutes since an individual will be punished only in situations where state law provides notice, and where his intent is criminal. In con-

trast, in section 1001 knowledge of federal jurisdiction is the sole element which converts non-blameworthy statements into a federal offense. Absent such a requirement, no notice will be provided in some situations. While it is true that in a few exceptional instances, criminal statutes properly make certain types of conduct illegal absent any knowledge requirement, these statutes are limited to acts whose inherent danger creates notice of their potential illegality, *United States* v. *Freed*, 401 U.S. 601, 609 (1971), or statutes which are essentially regulatory in nature, reaching acts *malum prohibitum* and subject to only minor penalties. *Morissette* v. *United States*, 342 U.S. 246 (1952). A violation of 18 U.S.C. § 1001 lies nowhere near either of these categories.

6. Finally, the Government claims that the inclusion of a requirement of knowledge of federal jurisdiction in section 1001 would make prosecution more difficult and restrict the effectiveness of the statute in fullfilling its purpose. The Court rejected a similar argument in *Morissette* v. *United States*, 342 U.S. at 259: "Of course the purpose of every statute would be 'obstructed' by requiring a finding of intent, if we assume that it had a purpose to convict without it. Therefore, the obstruction rationale does not help us to learn [Congress' intent]."

E. An Interpretation Of Section 1001 Which Does Not Require Proof That An Individual Knows His False Statement Was Within Federal Jurisdiction Would Unfairly Punish Persons Whose Conduct Does Not Merit Criminal Prosecution

The Government fails to recognize that there are situations in which a defendant "will be *unfairly* surprised if his conduct turns out to violate section 1001." (Brief for Petitioner at 36). The Government is wrong in insisting that omission of a jurisdictional knowledge requirement will in no instance create a "snare for the unsuspecting." The Government is incorrect in arguing that in no instance can individuals "claim plausibly that they believed they were engaging in innocent conduct," and that "the making of a statement one knows to be false must be

regarded as *malum in se*." (Brief for Petitioner at 34). A statement which is false but is not intended to influence the actions of others need not be considered *malum in se*.[14]

As previously discussed, it is entirely plausible that an individual could knowingly and willfully make a statement which was false but not deserving of the moral condemnation of the community. While Respondent Yermian in the instant case consciously set out to defraud his employer and in so doing engaged in wrongful conduct, this does not resolve the issue in instances where the false statement is not intended to influence the action of another person or entity and its purpose is merely to avoid disclosure of personal facts. Thus, the individual who lies to his neighbor about how many children he has simply because he does not wish to discuss the death of one child is not culpable in the same sense as Mr. Yermian, because such a person was not intending to influence the actions of his neighbor, let alone a government agency.[15] Such an individual can rightly claim that he was not involved in wrongful conduct, insofar as it cannot be argued that his conduct should be subject to criminal prosecution.

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[14] It is not necessary to digress into philosophical concepts of wrongfulness to resolve the issue before the Court. The term *malum in se* is simply meant to connote an action inherently subject to moral condemnation of the community.

[15] The Government relies on *Terry* v. *United States*, 131 F.2d 40 (8th Cir. 1942), to allay concerns of the Court that the hypothetical conduct described in the foregoing example would be subject to prosecution under section 1001. Such reliance is misplaced.

In *Terry*, the defendant made a false statement to a lending institution which only *later* chose to avail itself of federal funds. Since the federal involvement and the false statement were not contemporaneous, the court held that it would be contrary to legislative purpose to sustain a conviction under the statute. 131 F.2d at 44. The Government may claim that an example such as the individual who lies to his neighbor about his family history would not fall within section 1001 if the neighbor only *later* communicated the information

Therefore, the requirement that the government prove that the defendant knew his statement was false at the time it was made is not sufficient for the purpose of "separating blameworthy conduct from innocent conduct." (Brief for Petitioner at 34). Since the Government's reading of section 1001 would include a false statement not intended to influence the actions of others, there is a danger that the defendant will be unfairly surprised if his conduct turns out to violate section 1001.

Thus, it is not true that all defendants in section 1001 cases may be analogized to the Respondent in *Feola*. Unlike the perpetrator of an assault, the individual who lies to his neighbor about how many children he has does not know "from the very outset that his planned course of conduct is wrongful." *United States* v. *Feola*, 420 U.S. at 685. An individual who lies to his neighbor only to avoid the disclosure of personal facts is instead engaging in behavior more analogous to that of the defendant in *Lambert* v. *California*, 355 U.S. 225 (1957).

In *Lambert*, the defendant was convicted under a Los Angeles ordinance which made it criminal for a convicted felon to remain in the city for more than five days without registering with law enforcement officials. The Court indicated that the following deficiencies in the Los Angeles ordinance were objectionable: the statute provided for harsh punishment absent any criminal intent on behalf of the defendant, and further, the mere existence of the ordinance did not provide adequate notice to the individual of any wrongfulness of her remaining in the city without registering as a felon. Additionally, the Court struck down the ordinance since the mere act of remaining in Los Angeles was not worthy of criminal prosecution. If the Government's interpretation of section 1001 is accepted, it will, in some circumstances, punish an individual

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to a federal agency since there would be no agency jurisdiction at the time the statement was made. See Brief for Petitioner at 31. This fails to take into account that there will be some situations in which the governmental involvement and the making of the statement will be contemporaneous.

who lacks notice as well as knowledge of the element which converts his otherwise non-reprehensible statement into criminal behavior.

The third reason which led the Court in *Lambert* to strike down the Los Angeles ordinance is that: " 'A law which punished conduct which would not be blameworthy in the average member of the community would be too severe for that community to bear.' " 355 U.S. at 229, quoting *The Common Law* at 50. As Mr. Justice Douglas, the author of the majority opinion in *Lambert* later stated, "being in Los Angeles is not *per se* blameworthy." *United States* v. *Freed*, 401 U.S. 601, 608 (1971). Similarly, an individual who lies to his neighbor about how many children he has is not *per se* blameworthy, since he is unaware of the material element which will convert his statement into a crime. Such an individual is not worthy of criminal prosecution, but could be prosecuted if the Government's interpretation is accepted.

F. Since The Legislative History Of Section 1001 Is Clear, Neither Policy Concerns Nor Modern Trends In Statutory Drafting Can Justify Ignoring Congressional Intent

1. The Government has cited numerous examples of federal statutes which require no proof of knowledge of federal jurisdiction. (Brief for Petitioner at 38-39). In all of these statutes, the jurisdictional element serves no purpose other than providing a forum for federal prosecution. The Government claims that this is also true of section 1001. However, analysis of two cases cited by the Government demonstrate why section 1001 must be interpreted differently.

In *United States* v. *LeFaivre*, 507 F.2d 1288 (4th Cir. 1974), *cert. denied*, 420 U.S. 1004 (1975), the defendants were convicted of clearing stolen checks which had passed through interstate banking channels. Rejecting the defendants' claims

that they neither intended nor knew that interstate commerce facilities were involved, the court said:

> Congress's omission of any knowledge requirement with respect to the use of facilities in interstate commerce makes good sense. The use of facilities in interstate commerce is . . . nothing more than the jurisdictional peg on which Congress based federal jurisdiction. . . . The use of interstate facilities adds nothing whatsoever to the "criminality" of the person who is already engaged in one of the named unlawful activities. Thus, there is no need to require any mental element with respect to use of interstate facilities, since any mental element that Congress did write in would still not be any part of the *mens rea* of the criminal activity itself.

Id. at 1297 n.14.

In its discussion of statutes such as the Travel Act (18 U.S.C. § 1952), in which a jurisdictional element serves no purpose other than affording a forum for federal prosecution, the *LeFaivre* decision is helpful in understanding the ways in which section 1001 operates differently.

LeFaivre presented the typical situation in which a defendant engaged in unlawful conduct. Knowledge of the use of interstate facilities to effect the crime (cashing stolen checks) added nothing to the underlying criminality of the conduct. Thus, it was entirely proper for Congress to omit a mental element with respect to the use of interstate facilities, since "any mental element that Congress did write in would still not be any part of the *mens rea* of the criminal activity itself." *Id.*

These same principles were underscored in *United States* v. *Blassingame*, 427 F.2d 329 (2d Cir. 1970), *cert. denied*, 402 U.S. 945 (1971). In *Blassingame*, the court held that knowledge of the use of interstate communication was not an element of 18 U.S.C. § 1343 (fraud by wire). In explaining why the statute could fairly dispense with a jurisdictional knowledge requirement the court remarked that the statute did not "condition guilt upon knowledge that interstate communication is used." *Id.* at 330. The gravamen of the offense lay in the

fraudulent scheme itself. Nothing was "added to the guilt of the violator of the statute by reason of his having used an interstate telephone to further his scheme." *Id.*

The foregoing principle is equally applicable to every federal statute cited by the Government. Each cited statute involves underlying conduct criminal from the outset. Notice is provided either by state law or the inherent wrongfulness or dangerousness of the act. For this reason those statutes can fairly operate without a scienter requirement as to the jurisdictional element. Since the behavior is criminal irrespective of federal involvement, knowledge as to that element in no way increases the offender's guilt or blameworthiness. Therefore, as no additional notice is necessary, the scienter element as to federal jurisdiction can be justly omitted.

However, the principle does not apply to false statements within the purview of section 1001. As previously demonstrated, some statements, though false, are not of a nature serious enough to warrant criminal prosecution. Therefore, knowledge of federal involvement is the *sole* element which converts non-reprehensible behavior into a federal criminal offense in section 1001.

2. The Government urges the Court to construe section 1001 in light of modern trends in legislative *drafting* of criminal statutes. The modern approach is exemplified in the draft of the proposed federal Criminal Code, which to date has not been enacted into law. Under such an approach, jurisdiction as an element of the offense is separated from the basis for exercising federal criminal jurisdiction.

While such an approach in drafting is preferable, the Government fails to recognize that section 1001 was drafted in an era in which an opposite approach was employed. Prior to the 1970's, the mode used in drafting criminal statutes was to state the basis for exercising federal criminal jurisdiction

together with the basic criminal misconduct as an element of the offense.[16] S. REP. 97-307, 97th Cong., 1st Sess. 31 (1981).

Section 1001 was not drafted with modern principles in mind. The formats of the 1934 and 1948 amendments employ exactly the construction that one would expect had Congress intended to include knowledge of federal involvement as an element of the crime.

Were section 1001 a statute drafted after 1970, it would be plausible to conclude that since the jurisdictional elements are not separated, knowledge of facts giving rise to federal jurisdiction was not a separate element of the offense. However, since the 1948 statute was drafted thirty-six years ago, and because the legislative history indicates that it evolved from a statute requiring a specific intent to defraud the United States, the only logical conclusion is that section 1001 requires knowledge of federal jurisdiction as an element of the offense. Therefore, the Government's comment at page 40 of its brief that "there is no reason to assume that Congress intended in the case of section 1001 to depart from the normal practice of using jurisdictional language merely for the purpose of providing the basis for federal court jurisdiction, not also as a supplement to the culpability element" is misleading.

Additionally, when the Government refers to the "normal practice" of using jurisdictional language merely to afford a basis for federal prosecution, it fails to qualify those comments with an explanation that this is the normal practice, not in a statute like section 1001, (where knowledge of federal involve-

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[16] The draft federal Criminal Code acknowledges that the *historical* approach to drafting criminal statutes has often resulted in formulations of offenses which "unnecessarily require proof that the defendant knew or intended that his conduct would violate a Federal interest." S. REP 97-307, 97th Cong., 1st Sess. 32 (1981). Thus, while Congress may choose, in a *new* Criminal Code, to dispense with the necessity of such proof, the Government ignores that section 1001 was drafted in keeping with the historical approach.

ment is the sole element which may convert behavior into a federal crime,) but rather in statutes where the underlying conduct is already criminal and knowledge of federal involvement does not form the initial basis of liability.

3. The Government has discussed at length a wide variety of problems which can arise when an individual makes a false statement to an intermediary and later claims no knowledge of federal involvement. If that intermediary shares an important role along with the federal government in performing national tasks then this obviously has a detrimental effect on the operation of governmental functions. The most unsettling examples cited by the Government include the potential effect of a false statement made in a matter involving national security or the health and welfare of society. It is understandable that the Government would wish to resort to section 1001 as a panacea to combat the wide range of criminal abuses which threaten modern federal functions.

There is, however, a pitfall inherent in focusing on present day problems in an attempt to construe the elements of a 1934 statute. A focus on serious contemporary problems—such as the potentially dangerous effect of a false statement in a matter concerning national security or nuclear energy—diverts attention from the real issue presented in the instant case, namely an understanding of the concerns which prompted the enactment of the statute fifty years ago. As the foregoing examination of the legislative history reveals, the 1934 amendment was adopted in response to Congressional concern that the statute would no longer reach non-monetary frauds against the government. Concerns over the effect of false statements to intermediaries which could drastically interfere with national security were not part of the legislative debates at the time of the amendment.

Had those problems manifested themselves in 1934, rather than many years later, it is entirely possible that Congress would have chosen to eliminate jurisdictional knowledge as an element of the offense. Unfortunately, section 1001 was not

drafted broadly enough to reach every situation where a false statement affects an important federal concern. The remedy to this problem is not to expand the coverage of section 1001 but to address such concerns to Congress. If in light of the legislative history the Court adopted Respondent's interpretation of section 1001, then Congress may likely choose to amend section 1001 in the future or enact new legislation to accommodate modern concerns.

II. THE COURT'S INSTRUCTION TO THE JURY THAT IT COULD CONVICT IF "DEFENDANT KNEW OR SHOULD HAVE KNOWN" HIS INFORMATION WOULD BE SUBMITTED TO A GOVERNMENT AGENCY DID NOT PROPERLY INSTRUCT ON THE SCIENTER REQUIREMENT OF 18 U.S.C. § 1001

A conviction under 18 U.S.C. § 1001 requires knowledge that the statement is being made to a government agency. The district court, however, instructed the jury that it could convict the defendant if it found "that the defendant knew or *should have known* that the information was to be submitted to a government agency." J.A. at 25 (emphasis added). The Respondent timely objected to the language "should have known."

The instruction as given was erroneous as to the requirements for a finding of knowledge. By instructing the jury that it could convict if it found that the defendant "should have known" the destination of the information he submitted, the court allowed the jury to convict on an objective, rather than a subjective standard of knowledge.[17]

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[17] Even if this were an appropriate case for a *Jewell* instruction, *United States* v. *Jewell*, 532 F.2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951, (1976) the court's instruction omitted both critical elements of such an instruction. These elements are "(1) that the required knowledge is established if the accused is aware of a high probability of the existence of the fact in question, (2) unless he actually believes it does not exist." *Id.* at 704 n.21. *See also United States* v. *Esquer-Gamez*, 550 F.2d 1231, 1235 (9th Cir. 1977).

The court's instruction allowed the jury to find knowledge or its equivalent simply on the basis that Respondent "should have known" that his statements were going to the United States Government. Accordingly, the jury, under the court's instruction, could have convicted the Respondent without any finding that he actually was aware of a high probability that his statements affected a federal interest. The jury simply could have found that a reasonable person would have believed in the existence of that fact, which is exactly what the term "should have known" implies. In addition, the jury could have convicted even though it found Respondent actually believed his statements were not directed to the government.

The Government suggests that if section 1001 requires knowledge of federal involvement, the requirement should be fulfilled by a finding of "recklessness." The Government then argues that the jury was appropriately instructed as to such a requirement. The vague instruction of the district court is a far cry from the explicit term of "recklessness" urged by the Government.[18] The phrase "should have known" is reasonably susceptible of interpretations which involve *no* scienter as to federal involvement, but which instead improperly permit the jury to find that the defendant morally should have known or should have read the warning on the form.

Thus, a juror could have accepted Respondent's testimony, concluding that he did not read any references to the federal government on the forms in question, and that he simply believed that this was a private questionnaire for the purposes of his employer. Such a juror would not have found that the knowledge of federal involvement was "reckless." But that juror could easily, under the court's instruction, have con-

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[18] The term "recklessness" may be defined as "an attitude of mental indifference to obvious risks" and refers to the mental state "of a person who actually foresees the consequences of his conduct and, though not seeking those consequences, deliberately takes the risk of their happening." 17 Mod. L. Rev. 294, 304 (1954).

cluded that people *should* read every word in a form, and that for that reason, Mr. Yermian *should* have known about federal involvement. Accordingly, the jury could easily have convicted defendant without finding the scienter which the Government suggests as an alternative to actual knowledge.

Accordingly, should the Court find that the appropriate standard is one of "recklessness," the matter should be remanded for a new trial with an appropriate jury instruction.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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Supreme Court, U.S.
FILED
MAR 15 1984
ALEXANDER L. STEVAS
CLERK

No. 83-346

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

ESMAIL YERMIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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REPLY BRIEF FOR THE UNITED STATES

1. In our opening brief we showed that both the language and legislative purpose of the federal false statement statute, 18 U.S.C. 1001, support the conclusion that knowledge of federal involvement is not an element of a Section 1001 offense and that that conclusion is consistent with the purposes generally served by culpability requirements and jurisdictional language. In his brief, respondent acknowledges that he acted wrongfully in making false statements on a Department of Defense security clearance form he filled out at his employer's request and that such conduct therefore warranted imposition of criminal sanctions. See, *e.g.*, Resp. Br. 20 n.9, 21, 28. However, he urges the Court to reject a construction of Section 1001 that would encompass his false statements, contending that the same construction would

bring within the statute certain hypothetical false statements made casually to a neighbor that would not warrant criminal prosecution. In fact, respondent's hypotheticals are a red herring, since they would not fall within the scope of Section 1001 in any event.

Respondent states forthrightly that his own false statements were made for the purpose of defrauding his employer, and he appears to acknowledge that he could be prosecuted under a state statute for those statements. See Resp. Br. 20 n.9, 21, 22 n.11, 28. Under respondent's own reasoning, there would be no basis for challenging a federal criminal prosecution for his false statements on the theory of surprise or lack of adequate notice, since state law placed him on notice that his conduct was criminal. However, respondent presents two hypotheticals designed to demonstrate that an interpretation of Section 1001 that does not require proof of knowledge of federal involvement would penalize noncriminal conduct. Respondent first describes (Br. 20-21) the situation of an individual who, in the course of a casual conversation, replies to a neighbor's question by stating falsely that he had not been fired from a job; a representative of a federal agency that is performing a security clearance on the individual later approaches the neighbor, who repeats the lie. Respondent next poses (Br. 25) the hypothetical of an individual who, again in the course of a casual conversation, replies to a neighbor's question by stating falsely that he has three children (rather than two); the neighbor then repeats the information to a federal representative who is investigating the individual's claim for AFDC benefits. Respondent contends that such false statements, though not made with any criminal intent, would nevertheless be found to constitute a violation

of Section 1001 under our interpretation of the statute.

The simple answer to respondent's hypotheticals is that they involve statements that are not made "in [a] matter within the jurisdiction of any department or agency of the United States" within the meaning of Section 1001 and thus would not be prosecutable under that statute. Indeed, we explained this very point in our opening brief (at 37 n.27). It is difficult to imagine that any casual conversation that occurs in a personal context (*e.g.*, between neighbors) could involve a matter within federal agency jurisdiction at the time it is made. That the statement is repeated to a federal agency at some later point would not change the fact that at the time the original statement was made it was not in a matter within the agency's jurisdiction.[1] Unlike the hypotheticals, respondent's false statements *do* fall within the scope of the statute, since respondent's employer obtained his statements as part of the process of obtaining a Department of Defense security clearance for him.

In a similar vein, respondent urges that this case should be distinguished from *United States* v. *Feola*, 420 U.S. 671 (1975), in which the Court held that knowledge that the victim is a federal officer is not an element of a violation of the federal assault statute,

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[1] As this Court has recognized, the purpose of the "in any matter" phrase is to narrow the scope of the false statements Section 1001 otherwise would reach. See *United States* v. *Bramblett*, 348 U.S. 503, 508 (1955). Perhaps Congress could have enacted a statute that reached the hypothetical statements respondent suggests if it had imposed sanctions for false statements that were transmitted to the government or that affected the government in some way. However, Congress chose not to legislate so broadly.

18 U.S.C. 111. Respondent points out that assault is a criminal violation under the law of all states, while some false statements may not be covered by state criminal statutes. Respondent suggests that his conduct is more like that at issue in *Lambert* v. *California*, 355 U.S. 225 (1957), in which the Court held unconstitutional as applied a Los Angeles ordinance that made it criminal for a convicted felon to remain in the city for more than five days without registering with law enforcement officials.

Respondent's arguments are wide of the mark. He himself acknowledges (Br. 22 n.11) that some (we would suggest most) false statements made in a matter within federal agency jurisdiction but not made directly to the agency (presumably including his own) could be prosecuted under state fraud or false pretenses statutes. While some statements that fall within Section 1001 (as we interpret it) might not be reachable under state law (because, *e.g.*, they were not made for the purpose of obtaining a monetary advantage), we do not believe *Feola* suggests that federal and state criminal statutes must be precisely congruent; rather, the Court in *Feola* concluded that Congress would not have intended to create a "snare for the unsuspecting" (420 U.S. at 685) by transforming otherwise innocent conduct into a federal crime. Respondent acknowledges that his own false statements were not innocently made. We suggest that a false statement made in a matter within federal agency jurisdiction would normally be made in some sort of business or other nonpersonal setting (*e.g.*, an application for benefits) and would rarely (if ever) constitute innocent conduct; rather, an individual who makes such a statement "knows from the very outset that his conduct is wrongful" (*ibid.*).

Clearly such false statements are quite unlike the mere act of remaining in Los Angeles, which triggered criminal penalties under the ordinance at issue in *Lambert* v. *California*.

2. Respondent contends (Br. 5-16) that the language of Section 1001 is ambiguous and that its legislative history demonstrates a narrowly limited legislative purpose that does not extend to false statements like the ones he made. These contentions are unpersuasive.

As we showed in our opening brief, a natural reading of the language of Section 1001 indicates that Congress did not require proof of knowledge of federal agency involvement. The statute does not refer to any "intent to deceive" the federal government, nor does it refer to an individual who makes a false statement "knowing it is made" in a matter within federal agency jurisdiction. On its face, the statute requires only that a false statement that is made knowingly and willfully also be made in a matter within federal agency jurisdiction. The 1948 recodification, which respondent characterizes as rendering Section 1001 ambiguous, in fact clarified it by more definitively setting apart the "in any matter" language from the body of the statute.

Respondent contends that Congress's purpose in amending the federal false statement statute in 1934 was simply to overrule *United States* v. *Cohn*, 270 U.S. 339 (1926), so that it would be clear that the statute extended to false statements that did not involve a monetary claim against the government. While Congress surely intended the 1934 amendment to close the *Cohn* loophole (see *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941)), the change it made was far more extensive. The tenor of the legislative history makes it clear that Congress was interested in providing comprehensive protection for federal func-

tions. See *ibid.* Respondent himself acknowledges (Br. 18-19 n.8) that application of Section 1001 to statements that are not made directly to the federal government is faithful to the spirit of congressional intent. If that is so, there is no reason to conclude that Congress meant simultaneously to exclude many such statements from coverage by imposing a requirement of knowledge of federal involvement.

To the extent statements in the legislative history may leave in doubt just how far Congress meant to go in expanding the scope of protection, the statutory language it chose reveals the breadth of its purpose. Congress did not replace the old "intent to defraud the United States" language with the phrase "intent to deceive the United States" (as it presumably would have done if it wished simply to overrule *Cohn*); it eliminated altogether any reference to intent in connection with the United States and instead inserted the phrase "in any matter within the jurisdiction of a department or agency of the United States" at the very end of the false statement section. Respondent points to nothing in the legislative history that would suggest that Congress in fact intended a narrower change than the language itself indicates.[3]

3. Respondent contends (Br. 26) that it will not be difficult for the government to obtain convictions under Section 1001, even if it is required to prove beyond a reasonable doubt that an individual knew

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[3] Because the language and legislative purpose of Section 1001 are not ambiguous, there is no reason to apply the principle of lenity. See, *e.g.*, *McElroy* v. *United States*, 455 U.S. 642, 658 (1982); *Scarborough* v. *United States*, 431 U.S. 563, 577 (1977). And see *United States* v. *Bramblett*, 348 U.S. at 509-510 (although "criminal statutes are to be construed strictly * * * this does not mean that every criminal statute must be given the narrowest possible meaning in complete disregard of the purpose of the legislature").

his false statement was made in a matter within federal agency jurisdiction. It may well be that, even under the court of appeals' interpretation of the statute, the government would obtain convictions in some situations in which a false statement was not made directly to the government, but in which it nevertheless appears clear that the maker must have known the statement was made in a matter within federal agency jurisdiction. But the evidence may not always be so convincing. Moreover, as we noted in our opening brief (at 23), it will not necessarily be a simple matter for the government to produce evidence to rebut a defendant's own claim that he was unaware of federal involvement. Respondent himself urges (Br. 35-37) that there should be a subjective standard of knowledge, which would require proof beyond a reasonable doubt that an individual actually knew of federal involvement, rather than a "should have known" standard. Respondent presumably believes that he could have been acquitted under a subjective knowledge standard, despite the fact that the form he signed was captioned "Department of Defense Personnel Security Questionnaire" and included a large warning that any false statements would result in prosecution under Section 1001. Respondent's position itself contradicts his suggestion that requiring the government to prove knowledge of federal involvement beyond a reasonable doubt will not impede the interest in protecting federal functions.

For the foregoing reasons, and the reasons set forth in our opening brief, it is respectfully submitted that the judgment of the court of appeals should be reversed.

REX E. LEE
Solicitor General

MARCH 1984

☆ U. S. GOVERNMENT PRINTING OFFICE: 1984 421023 810

Esmail Yermian

Docketed: August 31, 1983

Court: United States Court of Appeals for the Ninth Circuit

Counsel for petitioner: Solicitor General

Counsel for respondent: Hillman, Stephen J.

Entry	Date	Note	Proceedings and Orders
1	Aug 31 1983	G	Petition for writ of certiorari filed.
3	Sep 20 1983		Order extending time to file response to petition until November 2, 1983.
4	Nov 2 1983	G	Motion of respondent for leave to proceed in forma pauperis filed.
5	Nov 2 1983		Brief of respondent Esmail Yermain in opposition filed.
6	Nov 9 1983		DISTRIBUTED. November 23, 1983
7	Nov 28 1983		Motion of respondent for leave to proceed in forma pauperis GRANTED.
8	Nov 28 1983		Petition GRANTED.
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9	Dec 8 1983	G	Motion of respondent for appointment of counsel filed.
10	Jan 9 1984		Motion for appointment of counsel GRANTED and it is ordered that Stephen J. Hillman, Esquire, of Los Angeles, California, is appointed to serve as counsel for the respondent in this case.
12	Jan 11 1984		Order extending time to file brief of petitioner on the merits until January 23, 1984.
13	Jan 26 1984		Joint appendix filed.
14	Jan 26 1984		Brief of petitioner United States filed.
15	Feb 2 1984		Record filed.
16	Feb 2 1984		Certified original record & C.A. proceedings received.
17	Feb 14 1984		SET FOR ARGUMENT. Tuesday, March 27, 1984. (1st case)
19	Feb 21 1984		Brief of respondent Esmail Yermain filed.
20	Mar 15 1984	X	Reply brief of petitioner United States filed.
21	Mar 27 1984		ARGUED.